Children in an Adult World:

Prosecuting Adolescents in Criminal and Juvenile Jurisdictions

by

Aaron Kupchik

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DEDICATION

To my mother and father, and to Elena. Your confidence in me, your love, and your support were more important to this project than you realize. Thank you.

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ABSTRACT

Since the creation of the juvenile justice system at the turn of the twentieth century, juvenile justice system reforms have reshaped how adolescents are prosecuted and punished in the United States. One important shift in the prosecution and punishment of adolescents is the increasingly frequent transfer of youth from the juvenile jurisdiction to the criminal jurisdiction previously reserved primarily for adult offenders.

Policy-makers and academics often assume that a different model of justice is reflected in the prosecution of adolescents in each of these two legal forums, with a criminal justice model in the criminal jurisdiction and a juvenile justice model in the juvenile jurisdiction. These two models of justice are believed to vary along three dimensions: formality of case processing, evaluation of defendants, and punishment. Yet no research to date compares the models of justice actually reflected when adolescents are prosecuted in juvenile and criminal jurisdictions.

In this dissertation I compare the models of justice in juvenile and criminal jurisdictions processing adolescent felony offenders. I analyze quantitative and qualitative data on cases of adolescents from counties in adjacent states, New York and New Jersey, which have very different boundaries between their criminal and juvenile

jurisdictions. This method allows me to contrast processing of comparable cases, matched by offender and offense characteristics, in the New York criminal jurisdiction and the New Jersey juvenile jurisdiction.

I find that the prosecution and punishment of adolescents in the New Jersey juvenile jurisdiction fits the juvenile justice model along each of the three dimensions I compare: formality, evaluation and punishment. Yet the prosecution and punishment of adolescents in the New York criminal jurisdiction fits neither a criminal justice model nor a juvenile justice model throughout case processing. I find that during the early stage of case processing, the New York criminal jurisdiction reflects a criminal justice model. Yet once the sentencing stage of case processing begins, a juvenile justice model better describes proceedings in the New York criminal jurisdiction. I discuss these results in light of courtroom workgroup members' attitudes toward youthfulness and adolescent culpability.

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CHAPTER 1: INTRODUCTION

Since the creation of the juvenile justice system at the turn of the twentieth century, juvenile justice system reforms have reshaped how adolescents are prosecuted and punished in the United States (see Feld 1999; Fagan and Zimring 2000). One important shift in the prosecution and punishment of adolescents is the increasingly frequent transfer of youth from the juvenile jurisdiction to the criminal jurisdiction previously reserved primarily for adult offenders. Over the past twenty-five years nearly every state has revised its laws or adopted new legislation to facilitate the transfer of adolescent offenders from the juvenile jurisdiction to the criminal jurisdiction (Snyder and Sickmund 1999; Zimring 1998).[1] As a result of this shift in policy, adolescents may be prosecuted in either of two jurisdiction types, depending on each state's laws.[2]

Traditionally, the juvenile jurisdiction and the (adult) criminal jurisdiction have relied on very different models of justice regarding case processing, evaluating offenders, and punishing offenders. The criminal jurisdiction often is characterized by

[1] Of course, referring to the "criminal jurisdiction" and the "juvenile jurisdiction" each as a single entity overlooks much of the variation among individual courts within each jurisdiction type. As I explain in the following pages, in this dissertation I consider these two jurisdiction types as they traditionally have been understood, and focus on specific examples of each jurisdiction type by comparing empirically specific courts.

[2] Since the creation of the juvenile justice system in 1899, juvenile jurisdiction judges have always had some leeway for transferring adolescents from the juvenile jurisdiction to the criminal jurisdiction, though this was a fairly rare occurrence (Rothman 1980). The recent spate of new laws mandating or

reference to a criminal justice model, and the juvenile jurisdiction described by reference to a juvenile justice model. Relative to a juvenile justice model, a criminal justice model suggests that case processing is formal, evaluation of offenders is centered on offense-relevant criteria rather than offender-relevant criteria, and the primary goals of sentencing are to punish and deter rather than to rehabilitate. Conversely, relative to a criminal justice model, a juvenile justice model suggests that case processing is informal, evaluation of offenders focuses on offender-relevant criteria rather than offense-relevant criteria, and the primary goal of sentencing is to rehabilitate rather than to punish.

It is unclear whether the prosecution and punishment of adolescents in criminal and juvenile jurisdictions reflect these two models of justice. For example, one might imagine that due to the immaturity of adolescent offenders, a juvenile justice model implying reduced culpability for youth actually might be used when adolescents are prosecuted in the criminal jurisdiction. Moreover, it is entirely possible that due to recent efforts to "get tough" on juvenile crime (see Feld 1999), juvenile jurisdictions might practice a criminal justice model whereby offenders are punished severely and proportional to the severity of their offenses. In this dissertation, I compare the models of justice used to prosecute and punish adolescents across these two jurisdiction types. Thus, the primary question I ask in this dissertation is 'How does

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facilitating transfer to the criminal jurisdiction has resulted in the more frequent use of jurisdictional transfer than in previous years (Snyder and Sickmund 1999).

jurisdiction type affect the model of justice used to prosecute and punish adolescent offenders?'.

Juvenile Justice Reforms

Before considering the models of justice that may be used in criminal and juvenile jurisdictions, it is important to understand how and why increasing numbers of adolescents are prosecuted in the criminal jurisdiction. The juvenile justice reform of transferring youth who commit serious offenses to the criminal jurisdiction formerly reserved for adults fits within broader trends in punishing criminal offenders. The rise of policies mandating or facilitating the transfer of youth to the criminal jurisdiction has corresponded with a broader shift in penal practices (Feld 1999), whereby increased punishment for criminal offenders (relative to thirty years ago) has become an accepted norm (see Garland 2001). Increases in numbers of violent and chronically offending youth prosecuted in the criminal jurisdiction have corresponded to increases in custodial punishment that have led to the emergence of mass imprisonment in the U.S. (see Garland 2000).

Proponents of transferring youth to the criminal jurisdiction claim that transfer laws are necessary to reform an outdated juvenile justice system initially created to deal with truants, not violent predators (Collier 1998; National District Attorneys Association 2000; Wilson 2000). They argue that the need to protect the community from violent youth, and the moral requirement for retribution in response to violence,

necessitate more severe punishments than are available in the juvenile jurisdiction's punishment portfolio. These proponents argue that the need to prescribe punishment proportional to serious offenses outweighs the desire to treat adolescents as less culpable than adults (Regnery 1986; see Kupchik, Fagan and Liberman 2003; Singer 1996; Zimring 2000). Demands for punishment and accountability following well-publicized acts of juvenile violence often are accompanied by public demands to punish youth in the criminal rather than the juvenile jurisdiction (DiFrancesco 1980).

Opponents of transferring youth to the criminal jurisdiction argue that many laws mandating transfer for increasing numbers of youth are counter-productive. Most research examining the general deterrent effect of transfer laws finds that if anything, juvenile crime increases overall after passage of transfer laws (Jensen and Metsger 1994; Risler, Sweatman and Nackerud 1998; Singer and MacDowall 1988; for an exception see Levitt 1998). And, research comparing recidivism among individuals prosecuted in juvenile and criminal jurisdictions finds that adolescents transferred to the criminal jurisdiction tend to be rearrested at greater rates than those retained in the juvenile jurisdiction (Bishop et al. 1996; Fagan 1996; Myers 2001; Winner et al. 1997). The majority of research suggests that prosecuting adolescents in the criminal jurisdiction tends to stigmatize them and increase levels of crime rather than deter future offending among both individuals and the general population (for a review see Bishop and Frazier 2000).

Many of these same opponents argue that transfer laws reveal a lack of understanding of child psychology and are theoretically problematic as well (see Scott and Grisso 1998; Zimring 1998). Research on cognitive development by developmental psychologists demonstrates that relative to adults adolescents are less likely to foresee the consequences of their actions, more influenced by peer pressure, more likely to act rashly and without thought about their behaviors, and less likely to comprehend the law and their legal rights (Fried and Repucci 2001; Grisso and Schwartz 2000; Grisso et al. n.d.; Scott, Repucci and Woolard 1995; Steinberg and Cauffman 1996). One of the guiding notions of the initial juvenile jurisdiction court was that juveniles are more likely to commit crimes than adults because of their relative immaturity and incomplete development. Some scholars state that given these developmental challenges, it makes little sense to treat adolescents who commit crimes due to their immaturity as if they are fully responsible adults (Fagan 2002; Zimring 1998).

Despite this debate about the value and logic of prosecuting adolescents in the criminal jurisdiction, we know little about how criminal jurisdiction court actors evaluate and attribute responsibility to adolescents (Mears 1998). Currently, no studies compare the prosecution and sentencing of adolescents in criminal and juvenile jurisdictions with regard to the effects of jurisdictional differences and their impact on the process and outcomes of courtroom decision-making. Many scholars and policy-makers assume a difference between juvenile and criminal jurisdictions –

corresponding to the distinction between a juvenile justice model and a criminal justice model (eg. DiFrancesco 1980; Fagan and Zimring 2000; McCollum 1999; Rushford 1994; Wilson 2000; Zimring 1998; see also Mears and Field 2000) – yet no studies compare the models of justice applied to the prosecution and sentencing of adolescents across these two jurisdictions. I address this issue in this dissertation, by comparing the prosecution and punishment of adolescents in juvenile and criminal jurisdictions and considering the models of justice pursued in each jurisdiction type.

Two Models of Justice

With the creation of transfer laws, policy-makers explicitly state their intention to subject youth to a more offense-based, formal and punitive treatment in the criminal jurisdiction (DiFrancesco 1980; National District Attorneys Association 2000; see also Klein 1998). Despite these intentions, some prior research suggests that jurisdictional transfer (from juvenile to criminal) may not eliminate an offender-oriented, rehabilitation focused, informal style of justice associated with a juvenile justice model throughout the twentieth century (Singer 1996; Singer, Fagan and Liberman 2000). The focus of individualized rehabilitation associated with the juvenile justice model (see Platt 1977; Rothman 1980; Ryerson 1978) is at odds with the criminal justice model in the criminal jurisdiction (Feld 1999; Hagan, Hewitt and Alwin 1979; Zimring 2000). These two models of justice vary from one another along three major dimensions: (1) formality of case processing, (2) evaluation of defendants, and (3)

sanctioning goals and punishment severity. In the following two sections I describe each model of justice.

Criminal Justice Model

Reviews of the empirical research on case processing in the criminal jurisdiction generally conclude that criminal jurisdiction courts follow a criminal justice model, whereby due process procedures are followed within an adversarial style of proceedings, and the evaluation of defendants is based primarily on characteristics of offenses. With regard to sentencing offenders, several scholars have commented on how contemporary sentencing has a primary goal of punishing offenders for wrong-doing, more so than improving their future welfare (see Beckett and Sasson 2000; Simon 1993).

According to a criminal justice model, criminal jurisdiction case processing is an adversarial contest between defense and prosecution, with interaction proceeding according to formal due procedure rules. Prosecutors and defense attorneys argue about evidence and characterizations of the defendant's conduct and compete with one another for victory. Judges oversee this process and ensure that the prosecutors and police follow procedural rules such as a defendant's right to confront her accusers and the exclusion of evidence that has been obtained improperly.

Certainly, over the past few decades scholars have portrayed criminal jurisdiction courtroom workgroups[3] as cooperative groups rather than adversaries, especially during plea bargaining (eg. Blumberg 1967; Feeley 1973, 1979; McConville and Mirsky 1995; Skolnick 1967; Packer 1964, 1968). For example, Herbert L. Packer (1964, 1968) identifies two models of the criminal justice process: a crime control model and a due process model. Though the due process model consists of adversarial proceedings and protections for defendants, the crime control model dispenses with formalities to pursue efficient and speedy dispositions of cases.

Yet even the crime control model, which at first glance contradicts a criminal justice model as I describe it here (in contrast to a juvenile justice model), is based on an "assembly line" process composed of "routinized operations" (Packer 1964:11); the routine operation of a crime control model is antithetical to the idiosyncratic nature of informal case processing that the original juvenile justice system was designed to produce (Rothman 1980). Moreover, Packer's description of a crime control model in the criminal jurisdiction has elements that establish it as a more formal style of case processing – even with few cases proceeding to trial – than many scholars argue is found in the juvenile jurisdiction. Criminal jurisdictions allow jury trials[4], courtrooms are open to the public and thus vulnerable to external scrutiny, and courtroom

[3] Sociologists studying courts have used this term to describe the prosecutors, judges, defense attorneys and any other professionals who work together to process defendants (eg. Eisenstein, Flemming and Nardulli 1988).

workgroups traditionally are limited to prosecutors, defense attorneys and judges (especially in the crime control model). In contrast, most juvenile jurisdictions do not allow jury trials (Bernard 1982; Feld 1999; Guggenheim and Hertz 1998), courtrooms are closed to the public and thus shielded from external scrutiny, and juvenile jurisdiction courtroom workgroups traditionally include many external participants such as treatment program providers, social workers and clinicians (Emerson 1969; Mahoney 1987; Rothman 1980). Furthermore, prior research estimates that defendants may be more likely to receive legal representation in criminal jurisdictions than juvenile jurisdictions (Feld 1989, 1998, 1999; see also Bortner 1982). Hence, although some descriptions of criminal jurisdiction courtrooms describe them as informal environments, relative to one another, most prior research establishes a greater level of formality in the criminal jurisdiction than the juvenile jurisdiction (see Thomas and Bilchik 1985; Stapleton and Teitelbaum 1972).

Additionally, according to this criminal justice model evaluations of defendants are guided by offense-oriented factors such as quality of the evidence, legal severity of the offense, and prior record of the offender (Hagan 1974; Kleck 1981; Wilbanks 1987). Characteristics of individual offenders or their future welfare are considered unimportant or secondary, as all defendants are presumed equally culpable under the law. Decision-making in this model is intended to be proportional to the

[4] Even though most defendants plead guilty rather than face a jury, the possibility by law of a jury trial is central to both a crime control model and a due process model (Packer 1964), and is an important

severity of offenses. Hence, many researchers find that extra-legal factors related to individual attributes do not significantly affect prosecution and sentencing decisions once legal factors are held constant.[5] Recent policy trends such as fixed sentencing guidelines demonstrate policy-makers' intentions that only offense-oriented factors ought to guide criminal jurisdiction evaluations (Savelsberg 1992; Tonry 1998).

Relative to the juvenile jurisdiction, the criminal jurisdiction is believed to pursue a more punitive punishment framework (eg. Zimring 1998). This includes a goal of retribution rather than rehabilitation, and sentences of greater severity than found in the juvenile jurisdiction. This theme of punishment in the criminal jurisdiction has become increasingly emphasized over the past two decades, as U.S. criminal jurisdiction courts have relied increasingly on incarceration as a solution to the problem of crime (eg. Garland 2000). One of the first to recognize such a trend was Francis Allen, whose claim of *The Decline of the Rehabilitative Ideal* announced a shift in sentencing goals away from rehabilitation and toward incapacitation (1981). More recently, Malcolm Feeley and Jonathan Simon have popularized the notion of the "new penology" (Feeley and Simon 1992; Simon and Feeley 1995). They use this term to describe an actuarial style of justice that prescribes punishments based on risk assessment rather than assessment of needs, and that warehouses criminals rather than

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factor in the difference in formality between juvenile and criminal jurisdictions.

[5] Though several studies find significant effects of race and gender on case outcomes, many interpret them as indicating systematic categorization and discrimination (Albonetti 1997; Spohn Gruhl and

treats offenders. Though some discount the claims of Feeley and Simon by arguing that actuarial justice is a continuation of modern criminal justice rather than the invention of a new postmodern penality (eg. Garland 1995; Lucken 1998), each of these accounts agrees that contemporary criminal jurisdictions sentence offenders with a primary goal of punishment for past offenses, rather than rehabilitation or harm reduction.

There is reason to expect that each of these dimensions of the criminal justice model may guide the prosecution and punishment of adolescents in a criminal jurisdiction. Policy-makers who create jurisdictional transfer policies explicitly state the primary goals of increased severity of punishment for adolescents and greater proportionality in evaluating defendants (eg. McCollum 1999; see also Raymond 2000). Transfer policies are created around the popular slogan "you do the crime, you do the time," suggesting that adolescents transferred to the criminal jurisdiction will be subjected to a more proportional and punitive scale of punishment than found in the juvenile jurisdiction. That is, transfer policies should result in adolescent offenders being evaluated with their offenses in mind rather than their youthfulness, and should end in punitive sanctions rather than rehabilitation.

For example, according to the National District Attorneys Association (2000), transfer to the criminal jurisdiction is necessary because:

Welch 1982; Ulmer and Kramer 1996; Zatz 1985; for a review see Zatz 2000) rather than as evidence of individualized justice.

> The traditional role of the juvenile justice system in seeking to place rehabilitation and the interests of the child first should no longer be applicable in the case of serious, violent, or habitual offenders.

In its Resource Manual and Policy Positions on Juvenile Crime Issues (2000), this association argues that transferring youth to the criminal jurisdiction will subject what they call "a new breed of delinquents" to a more severe sentencing framework relative to the juvenile jurisdiction (see also DiFrancesco 1980; Rushford 1994; Wilson 2000). At the national level, we see this same logic of transferring youth to the criminal jurisdiction to prescribe more severe and proportional penalties than available in the juvenile jurisdiction, in H.R. 1501, the Violent Juvenile and Repeat Offender Accountability Act of 1999 (106th Cong. § 201 (1999)). This Act was sponsored by former Representative Bill McCollum of Florida. Had it been enacted, this Act would have granted federal prosecutors discretion to bypass the juvenile jurisdiction and directly file in criminal jurisdiction all cases of defendants aged fourteen and older, and cases of defendants aged thirteen if approved by the Assistant Deputy Attorney General.[6] The Act was passed in the House of Representatives by a margin of 249 to 181 in June 1999, but subsequently died in committee due to an attached provision strengthening firearm laws.

Juvenile Justice Model

Many argue that the social organization of case processing in the juvenile jurisdiction differs from the criminal jurisdiction regarding procedural formality, evaluation of offenders, and sentencing goals and punishment severity (see Donzelot 1979; Feld 1999; Zimring 1998). Certainly, the initial juvenile justice system, formed just over a century ago by Progressive era reformers, were intended by their creators to have a greater focus on rehabilitation than the criminal jurisdiction (Bernard 1992; Bishop and Frazier 1991; Lemert 1970; Platt 1977; Rothman 1980; Ryerson 1978). Faced with the modern realization that children are different than adults and would benefit from different intervention strategies, treatments and punishments than would adults, the juvenile jurisdiction's founders created a new court system for juveniles that encouraged age-graded decision-making standards and treatments (Feld 1999; Rothman 1980; Ryerson 1978).

Although juveniles previously had been punished in separate institutions (Schlossman 1977), the advent of a distinct juvenile justice system marked the genesis of a new era. This movement was shaped by the growing belief that juveniles required unique court procedures and facilities. Founders of the juvenile justice system believed that juveniles who misbehaved were unwilling products of pathological environments, rather than intrinsically evil. Thus, the target of the juvenile justice system was the deprivation, not the depravation, of delinquent youth. The court's

[6] To have been eligible, defendants must have been arrested for a violent felony offense or for certain drug offenses.

mission was to re-socialize youth and provide them with the necessary tools for adopting a moral lifestyle. The juvenile justice system thus adopted a *parens patriae* ethic, whereby the State assumed the role of surrogate parent in fostering the proper growth and development of juveniles whose environments the State considered deficient (Feld 1999).

Consequently, individualized rehabilitation became the goal of this new system. In an effort to normalize delinquent juveniles through rehabilitation, the initial juvenile jurisdiction courts attempted to provide whatever treatment was necessary to re-socialize the individual juvenile. Eclipsed by this concern for the individual needs of the juvenile, the particulars of the offense as well as concerns about retribution tended to become unimportant.

In order to ensure that these reforms were instituted, great discretion was allocated to juvenile jurisdiction judges. Juvenile jurisdiction courts were designed to be informal environments where juveniles' needs would not be eclipsed by procedural or formal legal concerns (see Bernard 1992; Rothman 1980; Schlossman 1977; Sutton 1988). The founders of the juvenile jurisdiction imagined a judge and probation officer, assisted by medical and psychological treatment professionals, diagnosing and remedying a youth's problems without the requirement of constricting due process rules.

This rosy description of the juvenile jurisdiction is not one that is shared by every writer. Most famously, Anthony Platt argues that turn-of-the-century middle-

class reformers and industrialists shaped the initial juvenile jurisdiction into a class-based disciplining institution (1977; see also Donzelot 1979). His revisionist version of the juvenile jurisdiction's history contends that the juvenile jurisdiction initially served a class control function – it trained a pool of young laborers with the skills necessary (especially obedience to class-based authority) for factory labor. Yet even in Platt's version of events, the juvenile jurisdiction instituted a novel system of justice that sought to alter future behavior rather than simply to punish for past offenses; such a system facilitated the social control he describes. Thus even the harshest critics of the initial juvenile jurisdiction describe a jurisdiction with a relatively greater focus on rehabilitation and shaping future behavior than punishment and incapacitation.

Several studies of more modern juvenile jurisdiction courts find evidence to support this idea of an individualized, therapeutic model of justice in this jurisdiction (Bortner 1982; Cavender and Knepper 1992; Cullen, Golden and Cullen 1983; Emerson 1969; Giardino 1997; Gottfredson 1999; Grisso, Tomkins and Casey 1988; Martin 1992; Parker, Casbarn and Turnbull 1981; Sanborn 1994). For example, according to Franklin Zimring (2000:210), "The high value placed on the future life opportunities of the delinquent is a defining aspect of the juvenile court that sets it apart from the open-ended punishment portfolio of the criminal court." And, according to Jacques Donzelot (1979:110), "Juvenile court does not really pronounce judgment on crimes; it examines individuals."

Varying from Models of Justice

Of course these models of juvenile justice and criminal justice are ideal types that are unlikely ever to exist in pure form in the empirical world of actual institutions. Rather, most if not all courts incorporate elements of both models of justice. Mitigating circumstances such as an offender's background or disadvantage often are important considerations in the criminal jurisdiction, as are due process concerns and offenses characteristics in the juvenile jurisdiction. Fixed sentencing schemes, an attempt to institute a neoclassical rationality in the criminal jurisdiction (Savelsberg 1992; see also Tonry 1998), also have appeared in the juvenile jurisdiction (Feld 1999). Sentencing in the juvenile jurisdiction can sometimes be retributive, rather than rehabilitative, and sentencing in the criminal jurisdiction can incorporate rehabilitation.

Despite the fact that no criminal or juvenile jurisdiction reflects these two models of justice perfectly, there are important practical differences between the two types of jurisdictions. Juvenile and criminal jurisdictions often list different sentencing goals in their statutory missions, with juvenile jurisdictions emphasizing rehabilitation more so than criminal jurisdictions. Jury trials are provided for defendants in all criminal jurisdictions, but not for many juvenile jurisdictions (Feld 1999). Furthermore, in promoting and creating transfer laws, policy-makers very clearly pronounce the distinctions between juvenile justice and criminal justice that I describe (eg. DiFrancesco 1980; National District Attorneys Association 2000;

Rushford 1994; Wilson 2000). Though the actual distinctions between juvenile and criminal jurisdictions may not be as great as the differences between these two models of justice suggest, these models do suggest differences between these two jurisdictions along three dimensions: formality of case processing, evaluation of offenders, and punishment.

Research Question: Jurisdiction and Model of Justice

Based on these two models of justice, one would expect that the prosecution and punishment of adolescents in the criminal jurisdiction and the juvenile jurisdiction would be very different from one another along each of these three dimensions (formality, evaluation and punishment). Yet no prior research has addressed whether or not the actual practices of these two jurisdiction types resemble the two models of justice along each dimension. It is unclear whether both jurisdiction types practice juvenile justice, both practice criminal justice, or one practices juvenile justice and the other criminal justice. Furthermore, it is unclear whether they vary along only one or two of these dimensions, while maintaining similarity along other dimensions. Thus, in this dissertation I compare these two jurisdiction types and determine whether jurisdiction type affects the model of justice used to prosecute and punish adolescent felony offenders. In other words, does institutional practice bear out the assumptions and expectations that are conventionally projected onto it? And, what actually

happens as a result of transfer policies, which allocate adolescents to jurisdictions designed for adults?

The mismatch between an adolescent's immaturity and a criminal jurisdiction environment may cause tensions and practical difficulties that must be resolved by criminal jurisdiction personnel processing youthful defendants. It is entirely possible that criminal jurisdiction court decision-makers are unable to ignore adolescents' immaturity, or to hold adolescent defendants fully culpable for their actions as suggested by a criminal justice model. It is also possible that juvenile jurisdiction court decision-makers refuse to offer non-custodial or rehabilitative sentences to adolescent offenders they consider a threat to the community. Thus, we do not know whether adolescents receive a different model of justice – regarding formality of case processing, evaluation, and punishment – in criminal and juvenile jurisdictions.

To determine the relationship between jurisdiction type and model of justice, I compare each of the three dimensions of models of justice across jurisdictions. I compare the prosecution and punishment of adolescents in the New York criminal jurisdiction and the New Jersey juvenile jurisdiction to determine whether formality of case processing, evaluation of defendants, and sanctioning goals and punishment severity vary across the two jurisdiction types. In doing so, I analyze quantitative data on similar cases prosecuted in both jurisdiction types, as well as qualitative data consisting of court observations and in-depth interviews with court actors in both jurisdiction types. If I find that relative to the juvenile jurisdiction, the criminal

jurisdiction relies on a formal style of case processing, offense-based evaluative criteria, and a punitive sentencing framework, then the results will support the distinction between a juvenile and criminal model of justice and show that it is reflected in practice. However, if I find that both jurisdictions practice criminal justice, or that both practice juvenile justice, my data will challenge the distinction between a criminal and juvenile model of justice that is assumed by prior research and political rhetoric.

The Potential Role of Court Context

As I analyze the models of justice reflected by each jurisdiction, I also consider variation of individual courts within each jurisdiction. I thus compare the processing of adolescents across courts within the New Jersey juvenile jurisdiction courts, and across courts within the New York criminal jurisdiction. Though the central research question focuses on jurisdiction, I also consider court-level variation within jurisdictions because this might add greater detail to my analysis.

Examining court context within jurisdiction might offer another level of variation to the jurisdictional analysis. Prior research on both criminal and juvenile jurisdictions demonstrates that court actors in individual courtroom workgroups are influenced by local legal culture (eg., Eisenstein, Flemming and Nardulli 1988; Emerson 1969; Flemming, Nardulli and Eisenstein 1992; Nardulli, Eisenstein and Flemming 1988; Stapleton, Aday and Ito 1982). Local legal culture is shaped by and

influences the patterns of communication and interaction that modify prosecution and sentencing. Thus, court contexts might explain how models of justice are "filtered" (Ulmer and Kramer 1998; see also Heumann and Loftin 1979; Ulmer and Kramer 1996) and enacted in court communities.

Several factors may influence the process and outcomes of prosecuting adolescents within each jurisdiction type: the structure and organization of prosecutors' offices, defense attorneys' offices and judicial benches; the volume and types of cases heard in court; familiarity of individuals within courtroom workgroups; courtroom architecture; participation of defendants and their families; the input of other professionals external to court communities (eg. social workers or therapists); the balance of power among various parts of courtroom workgroups; and common assessments of normal offenses and offenders (see Balbus 1977; Cicourel 1968; Dixon 1995; Eisenstein et al. 1988; Emerson 1969; Feeley 1979; Flemming et al. 1992; Hasenfeld and Cheung 1985; Heumann 1978; Nardulli et al. 1988; Sudnow 1965; Ulmer 1997). No prior research compares the role that local legal cultures, court actors' attitudes, the impact of shared norms on case processing, or the organizational structures of courts play in prosecuting adolescents in these two jurisdiction types. As a result we do not know the extent to which local court contexts influence the type of justice model employed in each jurisdiction type and across courts within each jurisdiction type.

Importance of Comparing Juvenile and Criminal Jurisdictions

This dissertation reframes a central question in current studies on how criminal jurisdictions and juvenile jurisdictions process adolescent defendants. Several studies focus on how juvenile jurisdiction courts reconcile competing interests and goals as they prosecute adolescents. These competing goals include due process protections of youth, a rehabilitative mission, and the need to protect the community by punishing criminal offenders (Bortner 1982; Emerson 1969; Feld 1999). Yet no current studies either consider the resolution of these competing interests relative to how they are resolved in criminal jurisdictions, or examine the resolution of these interests in criminal jurisdictions that process adolescents. Rather, the existing literature hypothesizes that the criminal jurisdiction operates by a different set of logics – involving a more offense-based evaluation and a stronger goal of punishment within a more formal style of case processing – than the juvenile jurisdiction (see Mears and Field 2000; Simon 1999) without the benefit of research that tests the veracity of this hypothesis. The only studies that do consider the judicial philosophies guiding the criminal jurisdiction prosecution of adolescents do so without data on either the attitudes or behaviors of court actors (Singer 1996; Singer, Fagan and Liberman 2000). As a result we do not know which of the two models of justice is reflected in the case processing of adolescents in juvenile and criminal jurisdictions, and whether the processing of adolescents in these two forums diverge from one another. Moreover, no current studies consider the possibility of a new model of justice

emerging as increasing numbers of adolescents are transferred to the criminal jurisdiction. Thus this dissertation contributes to our understanding of juvenile justice by testing current understandings about the models of justice employed in the criminal and juvenile jurisdictions as they prosecute adolescents.

By comparing courts within jurisdiction types, this dissertation also contributes to the literature on the organization of criminal and juvenile jurisdiction courts. Previous research on courts in both jurisdiction types examines how courtroom workgroups filter various externally-imposed policies such as sentencing guidelines (Dixon 1995; Heumann and Loftin 1979; Savelsberg 1992; Ulmer and Kramer 1996, 1998). However, no such studies consider criminal jurisdiction courts that prosecute adolescent offenders. Given the priority of shared attitudes among courtroom actors in this body of research, one might expect that ideas of reduced maturity and culpability for youth – which may be prevalent when adolescents are prosecuted in the criminal jurisdiction – would have a significant impact on how these courtroom workgroups process adolescent defendants.

Furthermore, though prior research on juvenile jurisdiction courts examines the impact of court context on adjudication and sentencing (Bortner 1982; Cicourel 1968; Emerson 1969), no studies compare juvenile jurisdictions to criminal jurisdictions dealing with similar cases. Thus this dissertation broadens our knowledge by comparing how cases are assessed and outcomes are reached in these two jurisdiction types.

This dissertation also contributes to current understandings of the boundary between adolescence and adulthood, and how this boundary is operationalized by criminal and juvenile jurisdiction courts. Since the pioneering work of Phillipe Ariès (1967), in which he documents the socially constructed nature of childhood, few scholars have researched cultural understandings of the boundary between adolescence and adulthood. Some scholars refer to a shift among popular sentiments caused by commercialism, or the spread of information whereby juveniles are perceived as increasingly more mature (eg. Applebome 1998; Elkind 1981; Postman 1982; see also Johnson 2001; Lynott and Logue 1993). Others refer to adolescence as a stage of life that is perceived to be expanding at both of its borders, as both younger and older children are more likely to be considered adolescents than in previous decades (Zimring 1981). Yet these ideas have not been tested by any empirical research, nor with regard to how conceptions of childhood affect the practice of prosecuting and punishing adolescents. Clearly, this issue is at the forefront of the debate concerning whether adolescents should be prosecuted as adults when they commit crimes (Feld 1999). In this dissertation, I consider the attitudes of courtroom actors who engage in this practice, and ask how they balance the contradicting ideas of immaturity and criminal culpability among adolescents.

Dissertation Overview

In the following chapter, I present my research strategy for measuring the effect of jurisdiction type on models of justice. I discuss the selection of research sites, the statutory background of forums for prosecuting and punishing adolescents in each of the two sites I study, and my methods for collecting quantitative and qualitative data that bear upon my research question.

In chapter three, I present a brief description of the research sites I study, focusing on their structural and organizational features. The purpose of chapter three is to illustrate the basic features of these courts and allow the reader a sense of how these courts are organized and how they compare to one another. By offering relevant background information, this description should assist my analysis in subsequent chapters of how the courts in each jurisdiction type prosecute and punish adolescents.

In chapters four through six I analyze my data and compare the dimensions of models of justice across jurisdiction types. Chapter four presents the results of comparing the formality of case processing in the juvenile jurisdiction and criminal jurisdiction. In chapter five, I analyze the evaluation of adolescent defendants in these two jurisdiction types, and whether it conforms to the hypothesized distinction between juvenile and criminal justice models. Then, in chapter six I present both quantitative and qualitative analyses on sanctioning goals and punishment severity. I conclude with chapter seven by summarizing the results of my research, the implications and limitations of these results, and suggesting avenues for further inquiry.

CHAPTER 2: COMPARATIVE STRATEGY AND RESEARCH METHODS

To determine whether juvenile justice or criminal justice is pursued in criminal and juvenile jurisdictions, one would need to examine case processing and compare the formality, evaluation and punishment in both jurisdiction types. To do so, there are two basic strategies that one could use. One method is to compare cases of adolescents in the juvenile jurisdiction to those of adolescents in the same state or county who are transferred to the criminal jurisdiction (eg. Bishop et al. 1996; Mears and Field 2000; Podkopacz and Feld 1996; Winner et al. 1997). This is feasible in states that use a discretionary transfer process to select some cases for transfer to the criminal jurisdiction and retain other, comparable, cases in the juvenile jurisdiction. One could match these cases across the two jurisdiction types and select cases with similar offender and offense characteristics (eg. offense severity, prior record, sex, age, etc.). Because they come from the same geographic area, these data would allow researchers to compare the matched cases while holding constant environmental – political, economic, and broader cultural – influences.

Yet this single-site method has a substantial potential problem, in that it introduces the possibility of a sample selection bias. If court decision-makers are selecting for transfer to criminal jurisdiction the most serious offenders (as defined by prior record or offense severity) or those deemed less amenable to treatment, then the criminal jurisdiction cases in such a dataset might be different from the juvenile

jurisdiction cases. Finding that the criminal jurisdiction is more likely to sentence adolescents to incarceration might be an artifact of the greater severity of the cases or offenders that are selected for the criminal jurisdiction, thus confounding the effects of jurisdiction type with case-level characteristics such as offense severity. Since this very type of selection process is exactly how most discretionary transfer laws are designed to operate (Feld 1998), one might assume that this sample selection bias is a recurring problem in single-site comparisons (Fagan 1996). Researchers have attempted to eliminate this bias through careful matching procedures for selecting pairs of cases in the two jurisdictions (see Lanza-Kaduce et al. 2002). Yet one might argue that no matching procedure could reduce adequately the threat of sample selection bias when comparing a pool of cases selected for transfer to a pool of cases not selected.

The second strategy is to compare cases across states that have disparate boundaries between juvenile and criminal jurisdictions. One can select cases across two states with different laws governing how, at what age, and for what offenses adolescents are transferred to the criminal jurisdiction. These cases might demonstrate identical offender and offense characteristics, but are prosecuted in the juvenile jurisdiction in one state and criminal jurisdiction in the other (see Fagan 1991, 1995, 1996).

Though it eliminates the problem of selecting dissimilar cases, this latter method has its own vulnerability. By comparing cases across different states, it is

possible that one is comparing cases in court systems that are organized around different principles and norms other than simply their juvenile/criminal jurisdictional boundary. Or, one may be comparing cases across geographic areas in which very different attitudes and criminal justice practices are prevalent. One could imagine, for example, that differences among outcomes of prosecuting adolescents in New York City and in a Midwestern or Southern city would be due to regional disparities other than simply jurisdictional boundaries. Additionally, adolescents across distant regions may differ in unknown ways. Selecting sites that are near one another and share cultural, political and social structural characteristics greatly reduces the potential for regional distinctions.

To answer my research question, I use this latter strategy of comparing case processing across juvenile and criminal jurisdictions. I compare the prosecution and punishment of adolescents in the juvenile jurisdiction in New Jersey and in the criminal jurisdiction in New York; I use qualitative and quantitative data to compare punishments, and qualitative data to compare formality of case processing and evaluations of adolescents in the New York criminal jurisdiction and New Jersey juvenile jurisdiction. Because the boundaries between juvenile and criminal jurisdictions vary between these two states, I can study comparable qualitative cases and quantitative samples of adolescents across them. My comparisons include juvenile jurisdiction cases in New Jersey and cases that *would* be in New York's

juvenile jurisdiction[7] if not for New York's laws excluding certain youth from the juvenile jurisdiction to be prosecuted in the criminal jurisdiction.

The proximity and similarity of the sites I analyze reduces the primary vulnerability of this research strategy, that of differences in case processing due to regional disparities. Within New Jersey, I study the juvenile jurisdiction in three counties that border the Hudson River. These counties are among the three most populous in the state, and they each include large urban areas. Within New York, I examine the criminal jurisdiction in three boroughs (each of which are independent counties) of New York City. These six counties border one another (separated by only the Hudson River) and are matched along a variety of dimensions. They have similar crime problems relative to their positions in their respective states, and they each are in the top five counties in their respective states regarding numbers of homicides and numbers of individuals sent to state prison.[8] Furthermore, according to 1990 census data, the six sampled counties have similar rates of unemployment, poverty, female-headed households, and residential mobility (U.S. Census 1994). The two states are similar criminal justice climates as well; the similarity of their sentencing laws demonstrates that the two states' criminal justice systems punish comparable offenders in a broadly similar fashion. For example, an adult who is sentenced for a first armed

[7] In New York, the court system designated for juveniles is formally called "family court". I use the more common term, "juvenile jurisdiction," as a synonym here.

[8] According to the FBI Uniform Crime Report, New York and New Jersey arrest rates show overall similarities as well. For example, in 2000, the arrest rate per 100,000 population for all index offenses

robbery may receive a maximum prison sentence of up to twenty years in New Jersey and up to twenty-five years in New York. In sum, the sample includes cases from two states within a single social and criminal justice milieu. By collecting quantitative and qualitative data from these areas I reduce the likelihood of disparate environmental and organizational influences shaping my research results.

Below I discuss the laws for prosecuting adolescents in New York and New Jersey to illustrate the disparity between their criminal/juvenile jurisdictional boundaries. Because of their divergent laws, these two states allow me to test whether a juvenile justice model or a criminal justice model applies in each jurisdiction. Additionally, by studying multiple courts in each jurisdiction, I assess the relative impact of court context on the prosecution and punishment of adolescents as well.

Divergent Jurisdictional Boundaries

New York Criminal Jurisdiction

1. Juvenile Offender Law

The key to my comparative focus is the different legal environment in which adolescents are prosecuted in the two states, a result of their disparate boundaries between juvenile and criminal jurisdictions. The overall age of majority in New York is sixteen, meaning that the criminal jurisdiction handles exclusively all arrests of

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in New Jersey was 658.2, and 737.0 in New York (Pastore and Maguire 2002: calculated from table 4.5).

youth sixteen-years-old and older. Additionally, in 1978 New York passed the 'Juvenile Offender Law' (part of the New York State Crime Package Bill of 1978), which mandates that fourteen- and fifteen-year-olds (at the time of offense) who are charged with any of seventeen designated felony offenses,[9] and thirteen-year-olds charged with murder, are excluded from the juvenile jurisdiction. While these individuals (hereafter Juvenile Offenders, or JOs) can be waived back down to the juvenile jurisdiction, their cases originate in the criminal jurisdiction. The rules and procedures for prosecuting JOs match those of the criminal jurisdiction in general, but the sentences legislatively prescribed for JOs are less severe (regarding time sentenced to incarceration) than those for adult defendants (Singer 1996). As a result of New York's age of majority and the Juvenile Offender Law, all defendants aged sixteen and seventeen, and many aged fourteen and fifteen, are prosecuted in the criminal jurisdiction.

Previous research on the creation of the Juvenile Offender Law finds that it was created with the specific goal of providing increased penalties for youth committing serious offenses. In *Recriminalizing Delinquency*, Simon Singer (1996) describes the creation of this law as an organizationally and politically convenient response to increasing public fear about violent juvenile crime (see also Bortner 1986). Legislators expressed this fear through two avenues – an outcry about what was

[9] This list was initially set at twelve, but has since expanded to seventeen through legislative amendments (Warner 2000).

perceived to be an overly lenient juvenile justice system, and a demand for greater accountability for violent youth seen as predators. For example, Singer quotes a televised New York Senate Committee Hearing on juvenile crime, in which a detective describes how juveniles regularly attacked senior citizens:

> These juveniles would work in a wolf pack – three four, five at a time. It was not uncommon to have a ten-year-old placed in a bank to watch people cashing checks. When he found a likely victim he would go outside and signal the older kids. They in turn would follow this woman until she went to her apartment, with the hopes of pushing her in. (quoted in Singer 1996: 52)

And, the following exchange between Ralph Marino, the chairman of the Select Senate Committee on Crime, and a New York Police Detective, illustrates how police and policy-makers portrayed the juvenile justice system as allowing such victimization to occur by not holding offenders accountable for their actions:

> Senator Marino: Has it been your experience that when you were able to make an arrest, you were arresting basically young people? Detective: Yes. And not only that, we were arresting the same person over and over again. We would take him to Family Court, we would insist upon going to a judge. After court delays, maybe six or seven appearances, we got before the judge and we had a trial and the person was found guilty or, in Family Court, a finding of fact, we would leave the court convinced that the juvenile offender has now been prosecuted, found guilty, and will be dealt with by the Court. … [But] it was not uncommon to run into the same juvenile on the street a week later, and we had to ask him what happened in court… (quoted in Singer 1996: 53)

Partly on the strength of these perceptions, the Juvenile Offender Bill passed the Senate with a vote of fifty to two, and one hundred twenty-five to ten in the State Assembly (Singer 1996).

According to Singer, though some politicians were ambivalent or reluctant in their eventual support of this measure, theories of deterrence and retribution were implicit in the justification of this overwhelmingly popular legislative act (Singer 1996). Moreover, the law mandates transfer of jurisdiction from a juvenile jurisdiction whose purpose clause prioritizes rehabilitation, to a criminal jurisdiction for which rehabilitation or interests of the offender are not statutorily prescribed goals.

2. Youthful Offender (YO) Status

Despite the goal of retribution as a motivation for prosecuting adolescents in the criminal jurisdiction, New York's complex criminal justice system allows for more lenient sentencing for adolescents than for older offenders, allocated by way of judicial discretion. Most defendants younger than nineteen are eligible to be designated as "Youthful Offenders" (YOs) by the criminal jurisdiction judge presiding over their cases. Defendants convicted of anything other than a class A felony (eg. murder) and who have no prior felony convictions in the criminal jurisdiction are eligible for YO status if the judge can find mitigating circumstances related to the offense (eg. there was no weapon used, the defendant was not the ringleader of the group committing the act, etc.). This designation officially replaces conviction and has significant consequences – YO cases are sealed and confidential, the punishment given to YOs is limited to a maximum of four years in prison, and the designation allows the judge to depart from the prosecutor's sentencing recommendation as well as the state sentencing guidelines.

According to a recent report on case processing of JO defendants in New York City, 72% of JOs sentenced in 2000 received YO status (Criminal Justice Agency 2001). Most defendants with YO status are sentenced to probation, though some are sentenced to relatively short periods of incarceration. If the defendant is not a YO, JO sentencing guidelines provide for sentences ranging from a minimum of five to nine years and a maximum of life in prison for murder, to a minimum of one to two-and-a-third and a maximum of three to seven years for a class C felony (Warner 2000). Sixteen-year-olds who do not receive YO status are not protected by the reduced sentences given to JOs, and are exposed to longer prison terms (equal to those given to older offenders).

3. Specialized Court Parts

Another important consideration for understanding New York's method of prosecuting adolescents is the specialization of youth court parts.[10] In 1993, following the lobbying efforts of an influential judge and a grant from a private funding agency, New York City began to prosecute JOs in specialized court parts (Liberman, Raleigh and Solomon 2000). As a result most JO cases that continue past the initial stage of arraignment (which takes place in a lower court before being transferred up to the [Felony] Supreme Court) are now prosecuted before a judge who specializes in JO

[10] In New York, individual courtrooms are called "court parts." Each court part is referred to by a number and is presided over by a single judge.

cases. Other cases may be heard here as well, but usually only if a co-defendant is a JO.

In sum, the instances of criminal jurisdiction I study in New York consist of specialized courts within the criminal jurisdiction system. They follow all criminal jurisdictional procedural rules, but maintain a specialization in adolescents' cases and offer discounted punishments for adolescents.

New Jersey Juvenile Jurisdiction

In contrast to New York, New Jersey maintains a traditional juvenile justice system. From its inception in 1929 to the present, juveniles charged as "delinquents" (i.e., accused of criminal or status offenses) who are below the age of sixteen (amended to eighteen in 1952) are adjudicated under the jurisdiction of Juvenile and Domestic Relations Courts (N.J. Stat. Ann. §2A:4-2 (1952)). In 1970, the New Jersey Supreme Court reaffirmed that "[t]he philosophy of our juvenile court system is aimed at rehabilitation through reformation and education in order to restore a delinquent youth to a position of responsible citizenship" (109 N.J. Super. (1970)). In 1973, the state removed status offenders from the jurisdiction of the juvenile jurisdiction (Laws of 1973, ch. 306; N.J. Stat. Ann. § 2A:4-43(a)).

The New Jersey juvenile jurisdiction's statutory mission changed in 1982, when the New Jersey legislature enacted a new Juvenile Code that recognizes the dual purposes of the juvenile jurisdiction:

> This bill recognizes that the public welfare and the best interests of juveniles can be served most effectively through an approach which provides for harsher penalties for juveniles who commit serious acts or who are repetitive offenders, while broadening family responsibility and the use of alternative dispositions for juveniles committing less serious offenses. . . . (Senate Judiciary Committee Statement No. 641-L, 1982)

The new legislation includes "tougher" delinquency sentencing and jurisdictional transfer provisions, and permits the use of short-term incarceration, not to exceed sixty days, to deter future offending. It also creates a presumption for secure confinement in the juvenile system for youth charged with serious crimes such as murder, rape, and robbery.[11] The New Jersey juvenile code authorizes sentences of up to four years in prison for the most serious crimes other than murder,[12] and proportionally shorter sentences for less serious offenses.

New Jersey maintains a fairly traditional juvenile jurisdiction, for which rehabilitation and punishment are both explicitly stated goals. As a result, it serves as an excellent contrast to New York's system of criminalizing adolescents. The prosecution of all offenders younger than eighteen in New Jersey originates in the juvenile jurisdiction (Snyder and Sickmund 1999). Juvenile jurisdiction judges have

[11] It is unclear why the New Jersey legislature chose to enhance sentencing in the juvenile jurisdiction rather than exclude large numbers of adolescents from the juvenile jurisdiction, as the New York legislature did just four years earlier. Simon Singer (1996) explains New York's adoption of the Juvenile Offender Law as an organizationally expedient reclassification of delinquents that was shaped by the institutional history of legislation in New York – a similar sociological analysis of the factors preventing similar legislation in New Jersey has not been conducted. The fact that these two similar states chose different paths within five years of each other would be an interesting subject for future research on the passage of juvenile justice legislation.

[12] Defendants convicted of murder in juvenile court can be sentenced to up to 20 years in prison.

the discretion to waive individuals to the criminal jurisdiction, although they rarely utilize this option (Fagan 1991). Additionally, despite a recent nationwide trend of altering juvenile jurisdiction purpose clauses to mention only punishment rather than rehabilitation and punishment (see Feld 1998), New Jersey maintains a dual statutory goal of rehabilitation and punishment. Of the five sections of the New Jersey juvenile jurisdiction's stated purpose, the first reads as follows:

> To preserve the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of juveniles coming within the provision of this act. (New Jersey Code of Criminal Justice 2002 §2A:4A-21).

Sentencing in New Jersey juvenile jurisdictions reflects several tenets of a juvenile justice model. Judges have wide discretion with regard to the range of factors they consider when sentencing, and the type of sentence they prescribe. When a judge imposes a prison sentence, she can set any length of sentence within a maximum of three years. Furthermore, judges are required by law to consider the interests of offenders in addition to factors such as severity of the offense and prior record. Hence, the New Jersey juvenile jurisdiction represents a classic penal-welfare compromise (Garland 1985) in which a goal of rehabilitation is prioritized and characteristics of offenders matter, yet offenders are punished for their offenses. The following is the list of factors to be considered in sentencing adolescents – note that following the first two criteria, all the rest are focused on the defendant's social background, development and well-being:

(1) The nature and circumstances of the offense;
(2) The degree of injury to persons or damage to property caused by the juvenile's offense;
(3) The juvenile's age, previous record, prior social service received and out-of-home placement history;
(4) Whether the disposition supports family strength, responsibility and unity and the well-being and physical safety of the juvenile;
(5) Whether the disposition provides for reasonable participation by the child's parent, guardian, or custodian, provided, however, that the failure of a parent or parents to cooperate in the disposition shall not be weighed against the juvenile in arriving at an appropriate disposition;
(6) Whether the disposition recognizes and treats the unique physical, psychological and social characteristics and needs of the child
(7) Whether the disposition contributes to the developmental needs of the child, including the academic and social needs of the child where the child has mental retardation or learning disabilities; and
(8) Any other circumstances related to the offense and the juvenile's social history as deemed appropriate by the court. (New Jersey Code of Criminal Justice, 2002 §2A:4A-43)

In sum, New Jersey and New York offer a unique opportunity to contrast the prosecution and punishment of adolescents across juvenile and criminal jurisdictions, as well as across courts within each jurisdiction. I take this opportunity to compare qualitative cases and quantitative samples of similar offenders (matched by age and offense type), and to test whether differences in the prosecution and punishment of these cases in the two jurisdiction types matches the distinction between a juvenile model of justice and a criminal model of justice.

Sampling Strategy

To quantitatively analyze case processing and punishments across New York's criminal jurisdiction and New Jersey's juvenile jurisdiction, I sampled cases of fifteen- and sixteen-year-old defendants who are charged with aggravated assault ($1^{st°}$ and $2^{nd°}$), robbery ($1^{st°}$ and $2^{nd°}$), or burglary ($1^{st°}$) in 1992 or 1993 in three counties of New York City and three counties of Northeastern New Jersey. I use these three offense types because they are all serious felony charges[13] and they are among the most common offenses from the list of "JO eligible" offenses (thus providing a large sample). Precautions taken helped ensure that the cases in both states are of equal severity offenses. One, I sampled after an initial screening process in each system. In New York they were sampled at arraignment, after screening by prosecutors for legal sufficiency and appropriate charging. In New Jersey they were sampled at court filing, after having passed an initial screening by a prosecutor. As a result of the screening, one can be fairly confident that most of the sampled offenses are appropriately charged. Two, the sample includes only the most serious sub-charges within each offense type.

I use this age range because in New York, it includes both adolescents excluded from the juvenile jurisdiction by the JO Law (fifteen-year-olds) and individuals who are above the state's general age of criminal majority (sixteen-year-

[13] It is advantageous to sample serious felonies because they are more likely to be similarly defined and enforced across jurisdictions than less serious offenses, such as drug offenses or misdemeanors.

olds). Thus the New York data are able to show how adolescents fare in the criminal jurisdiction regardless of the legal method by which they arrive there (both exclusion from the juvenile jurisdiction and surpassing the general age of majority).

I should note that both states have transfer provisions which have the potential to introduce dissimilarities between the two state-level sub-samples; this would occur if the more serious cases from New Jersey were transferred (to the criminal jurisdiction) and thus not included here, as with less serious cases from New York (transferred to the juvenile jurisdiction). Yet this does not seem to be the case. New Jersey courts have the option to transfer adolescents up to the criminal jurisdiction, though prior research in the same counties with a similar sample (see Fagan 1991; Kupchik, Fagan and Liberman 2003) shows that this option is used extremely rarely.[14] In New York, fifteen-year-olds may be transferred down to the juvenile jurisdiction. However, descriptive comparisons of the fifteen- and sixteen-year-olds in the New York sample here show that they are subjected to nearly identical outcomes. As a result of the infrequent use of transfer in New Jersey, and the similarity of court handling of transfer eligible and ineligible cases in New York, the opportunity for transfer in these jurisdictions should not introduce a sample bias.

[14] In Jeffrey Fagan's previous work – of which the quantitative data used here is a replication and extension – only 1.4% of all cases were transferred from the New Jersey juvenile jurisdiction to the New Jersey criminal jurisdiction (Fagan 1991, 1996). Among cases in his most recent sample, from which the data I analyze in chapter 6 are taken, only 1.2% are transferred (Kupchik et al. 2003).

Quantitative Data Sources

The quantitative data I use are a subset of data collected under the supervision of Professor Jeffrey Fagan at Columbia University. Professor Fagan gathered these data to compare recidivism rates across adolescents prosecuted in New Jersey's juvenile jurisdiction and New York's criminal jurisdiction. I assisted in the data collection as a Research Assistant early in the project, and then supervised the later stages of data collection as the Project Director working under Professor Fagan.

We assembled the data from a variety of sources. The New Jersey Administrative Office of Courts provided data for one of the three New Jersey juvenile jurisdiction courts in automated format. For the other two New Jersey courts, other researchers and I manually collected data at the county courthouses from case files of sampled individuals. This involved a painstaking process of reading through sampled individuals' entire case files – some of which were very thick manila folders, well over two inches in some cases – and collecting information on the particular sampled cases. The data collection process took over two years to complete for these two New Jersey courts. The New York City Criminal Justice Agency, the city's pretrial services agency, which collects and stores data on all New York City criminal defendants, provided the New York criminal jurisdiction data. The New York data were supplemented by data from the New York Department of Criminal Justice Services.

Qualitative Data and Methods

To compare the models of justice that guide case processing in both jurisdiction types, I use qualitative data on the formality of case processing and the evaluation of adolescents. I observed court proceedings and interviewed courtroom actors in two courts in the New Jersey juvenile jurisdiction and two courts in the New York criminal jurisdiction. I assign the New York criminal jurisdiction courts pseudonyms of Brady and Brown County courts, and the New Jersey juvenile jurisdiction courts Pierce and Walker.

The most influential previous studies of juvenile jurisdictions – especially those by Aaron Cicourel and by Robert Emerson – both note that qualitative research is necessary for understanding how juvenile jurisdiction courts function (Cicourel 1968; Emerson 1969; see also Bortner 1982). I would add that when comparing courts across jurisdiction types – courts that may not record or maintain data in similar fashion, or that may have different official categories of dispositions and reasons for dispositions – qualitative research becomes even more crucial. For this reason I use both quantitative and qualitative methods to compare juvenile and criminal jurisdictions.

Interviews

I conducted interviews with judges, prosecutors and defense attorneys who work in the two courts in the New York criminal jurisdiction and two courts in the

New Jersey juvenile jurisdiction. I performed thirty-two interviews across both jurisdictions. The interviews consist of both open-ended questions followed by probes to explore themes, and closed-ended questions asking respondents to give answers to questions using scaled response sheets. They are semi-structured, with several guided questions and room for exploring topics in open-ended fashion, and ranged from fifty minutes to two hours in length. The subjects discussed include the criteria used by court actors to make decisions, the manner in which these individuals interact with one another, the practical difficulties court actors face and strategies for dealing with these difficulties, and both formal and informal procedures for prosecuting adolescents. The interviews assess strategies used for interacting with other courtroom workgroup actors, as well as the frames of relevance[15] and ideas of childhood culpability on which actors rely when dealing with adolescent defendants. They are designed to address my research question by inquiring about the formality of case processing, the evaluation of adolescent defendants, and punishments given to adolescents. All interviews were tape-recorded and transcribed by a professional transcriber.

In addition to asking respondents open-ended questions and closed-ended scaled questions, I also gave each interview respondent a brief survey to complete and return. This survey asked respondents to evaluate how important several goals or

[15] Stewart Asquith (1983) uses this term to describe the institutionalized goals and normative frameworks adopted by court actors in England's juvenile courts and Scotland's children's hearings.

ideas should be, on a scale of one to four.[16] Of the thirty-two respondents, twenty-six returned the surveys.

Table 2.1 lists the numbers of interview respondents by their positions in each jurisdiction type, as well as by sex and race. Though I attempted to recruit a sample of respondents that is representative of the populations of court actors in these positions, two primary constraints impeded this effort. One is the limited number of people in some of the positions, such as judges in New York – there is only one judge presiding over the youth part in each New York county. The second is consent from sponsoring agencies for personnel to participate. Though I had no difficulty eliciting participation from individuals, on two occasions sponsoring agencies precluded individuals from participating. One occasion was the District Attorney's office of Brown County. I interviewed the supervising prosecutor of the bureau responsible for prosecuting adolescents, although this respondent seems to have discouraged the prosecutors working under her from participating.[17]

[16] Values of the scale were as follows: 1=not important at all; 2=somewhat important; 3=important; 4=very important.

[17] This supervising prosecutor did allow me to invite the assistant district attorneys working under her to participate. However, they all refused to do so, and all gave the same reason –I had already spoken to their boss and they did not want to add anything beyond what she stated. Given that the wording of their refusals was nearly identical, and that two of them previously had agreed to do an interview pending the supervisor's approval, I assume that they were discouraged from participation by the supervisor.

Table 2.1. Numbers of Interview Respondents by Jurisdiction Type, Race, Sex and Professional Role

		White		African American		Hispanic or Other		
		Male	Female	Male	Female	Male	Female	Total
Juvenile Jurisdiction:	Judges	2	0	0	0	0	0	2
	Prosecutors	2	2	2	1	0	0	7
	Defense Attorneys	5	1	1	0	0	1	8
Criminal Jurisdiction:	Judges	1	0	0	0	1	0	2
	Prosecutors	1	4	0	0	0	0	5
	Defense Attorneys	4	4	0	0	0	0	8

The second occasion was the refusal of the New Jersey Administrative Office of Courts (AOC) to allow juvenile jurisdiction judges to participate in the study. Following rejection of my initial request to invite judges to participate, I met with the two administrators of the AOC, the state's lead juvenile jurisdiction judge and the director of trial services, at their state headquarters to discuss the research project. They refused to allow judges to participate in the project, despite my guarantees of anonymity. Their reasons for denying the interviews were twofold: (1) they wanted to protect judges from outside scrutiny, and (2) they believed my investigation into judicial decision-making had no merit. They did, however, allow me to observe court proceedings. Fortunately, this problem only occurred when I requested access to the second of the two New Jersey courts I studied, in Walker County. The presiding judge

of the first New Jersey court I studied, in Pierce County, granted me approval to interview judges, which I did, prior to any involvement of the AOC. But as a result of the AOC's refusal to allow this one part of my research, only two juvenile jurisdiction judges were interviewed, both from Pierce County.

Although this is unfortunate, the loss of data is manageable. In some ways, relative to prosecutors and defense attorneys, judges are less important as interview respondents. Their decision-making behaviors are more closely guided by statute (if not, they invite embarrassing appeals), more of what they do takes place in open court compared to the actions of other court actors, and they are required to voice reasons for the decisions that they make. Thus I was able to infer much about the attitudes and predispositions of the two judges whom I was prevented from interviewing through court observations rather than interviews.

Court Observations

In addition to interviews, my qualitative data consist of fieldnotes from observing case processing of adolescents in two courts in the New York criminal jurisdiction and two courts in the New Jersey juvenile jurisdiction. I visited these courts over the course of eighteen months (October 2000 to April 2002), and observed a total of 978 hearings. Rather than following individual cases (which occasionally take years for completion), I attended court on days for which a large number of cases were scheduled to be heard. In the New York criminal jurisdiction, I attended all court

"calendar" days; calendar days are days in which all active cases not on trial are scheduled for whatever action or hearing type is required. This procedure ensured that I observed the full array of each court's caseload, because all cases appear on calendar days at some time. In the New Jersey juvenile jurisdiction there is no specific calendar day, so I attended court on the days with the most cases scheduled each week. I also observed at least one trial in each court.

In the two courts in the New York criminal jurisdiction, the judges allowed me to sit up front with the court clerk rather than in the audience. This was of enormous benefit, since it allowed me to observe the off-the-record posturing and negotiation that frequently occurs at each judge's bench (Bortner 1982; Cavender and Knepper 1992; Mather 1979; Maynard 1984). This is not necessary in the juvenile jurisdiction courts I observed; because juvenile jurisdiction hearings are confidential and closed to the public, court actors hold almost all conversations in the open (usually between cases, with no defendants present and no formal records being taken) rather than approaching the judge's bench during hearings. No participants ever acknowledged my presence during hearings (either verbally or through physical gestures), and I remained silent during all hearings, thus it is unlikely that my presence had any effect on the content or interaction of these hearings.[18]

[18] Many judges conduct hearings with a legal clerk or administrative clerk by their sides, thus attorneys are accustomed to a person sitting next to a judge.

In three of the four courts I was able to develop a rapport with the judges and court staff, and was seen to some extent as a "regular" (see Mather 1979). In one of the New York criminal jurisdiction courts, Brady County, the court clerk occasionally deputized me to help the judge by finding defendant's files in his filing system when the court clerk had to step away from her desk. This was of course very helpful; court staff were not afraid to speak freely in front of me, they allowed me to observe all court activity, and they were generous with their time in answering my questions and offering their opinions of each day's activities.

Despite my good rapport with court staff in three of the four courts, I was treated as an "outsider" in Walker County (see Mather 1979). According to the few attorneys with whom I was able to form a friendship here, the local legal culture (see Eisenstein et al. 1988) includes careful oversight of judges by county administrators, which makes judges feel very vulnerable to any negative evaluation. According to these attorneys and my observations, much more so than in the other three courts I study, judges in Walker County are afraid of "getting caught" doing anything inappropriate. For example, one of the two judges in this court read the following script before every hearing I observed. He stated the following directly after each attorney stated their appearance for the court record:

> Also in the courtroom is Mr. Aaron Kupchik of the Center for Violence Research and Prevention at Columbia University.[19] He has been granted permission by the Supreme Court to observe proceedings given the following criteria: one, that he obtain consent from the judge presiding over this matter, which he has; two, that no names of juveniles be recorded; and three, that no party objects to his presence. Do either of you object to Mr. Kupchik's presence for this matter?

No attorney ever objected to my presence, but this script labeled me as an outsider and was a burden to being accepted into the court community in this one county.

In addition to court observations, I observed meetings and peripheral court actions as well. I attended several meetings held by the Brown County judge with members of the probation office, correctional facilities, the District Attorney's office and with representatives from treatment programs working with the court. I also observed a meeting between the lead juvenile jurisdiction judge in Pierce County and heads of various treatment program agencies. And, though less directly relevant (but more exciting), I accompanied probation officers and police in Pierce County, New Jersey, on surprise nighttime curfew checks and drug monitoring in the homes of juveniles on probation.

When observing court I noted all participants (judge, prosecutor, defense attorney, defendant, and any other participant), including their sex, race and manner of dress (for defendants); the content and nature of discussions in court; the content and

[19] At the time I was working at a research center at Columbia University. Because of this center's previous research and affiliation with the courts I was studying, this position allowed me access to courts that might have been unavailable to a graduate student working alone.

nature of off-the-record conversations; the requests by different parties of the judge; and the reasons and explanations given for these requests or for any decisions that court actors make. I was able to note accurately this dialogue due to the typical nature and repetition of most interactions. The frequency of identical or very similar exchanges between court actors allowed me to use brief notations for many of these exchanges and focus my note-taking efforts on any unusual interaction (see West 1996). I transcribed these fieldnotes daily in order to translate my notes into nearly complete records of all court activity. Though exact transcriptions of hearings would be preferable to the data used, the fieldnotes I recorded are quite adequate and are consistent with data used by others for similar research (Holstein 1988; see also Atkinson and Drew 1979).

I analyzed the fieldnotes and interviews using both traditional qualitative methods and the qualitative data analysis software, NU-DIST. The traditional methods involved reading through each transcript, coding the data into themes and manually searching for patterns among the data (Lofland and Lofland 1984). I select the data presented in the following chapters because they best characterize the repeated patterns that emerge from my analyses (see Emerson, Fretz and Shaw 1995). These patterns are clear in both data sources and were identified by both methods of analysis, thus adding confidence to the reliability and validity of the findings.

CHAPTER 3: RESEARCH SITES

Before I begin comparing the New York criminal jurisdiction and the New Jersey juvenile jurisdiction along the three theoretical dimensions that distinguish between juvenile and criminal justice, I first describe the research sites I study. In this chapter, I offer a brief description of the court communities in the four courts I compare with qualitative data in the two jurisdictions – two New Jersey juvenile courts and two New York criminal courts[20] – in subsequent chapters. Though the following chapters continue with a detailed analysis of how these courts and jurisdictions compare to one another, the current chapter allows the reader a sense of how these research sites are organized by discussing three characteristics of the court communities that the prior research establishes as important: (1) physical setting, (2) organization of court work, and (3) stability of membership. By offering a background description of the basic features of these courts, this chapter should help the reader understand my analyses of formality, evaluation of adolescents, and punishment across the two jurisdiction types in the following chapters. First I discuss these three characteristics of the New Jersey juvenile jurisdiction, then the New York criminal jurisdiction, and finally I compare courts within each jurisdiction type.

New Jersey Juvenile Jurisdiction

Physical Setting

In contrast to the image of grand courthouses with large marble stairways and grand marble columns, the two buildings housing the New Jersey juvenile jurisdiction courtrooms are relatively plain buildings that could just as easily pass for office buildings rather than arms of the State. The courtrooms are small and unimposing. They each have a soft décor, with shielded overhead lights (rather than fluorescent lighting) and (for some) fresh paint and carpeting. Because juvenile jurisdiction hearings are confidential, spectators other than court staff or external sponsoring agents (eg. social workers, probation officers) are not allowed in court.

Organization of Court Work

1. Judicial benches

In New Jersey, judges are appointed by the Governor. From the description of many New Jersey court actors with whom I spoke, this process is heavily influenced by negotiation within the state political apparatus, and is used to reward attorneys through a patronage system. Some attorneys with whom I spoke even went so far as to accuse one juvenile jurisdiction judge of obtaining this position through large contributions to the Governor's re-election campaign, another of utilizing family connections to obtain a judgeship, and a third of being connected to local organized crime. Though I doubt the legitimacy of these accusations, they illustrate that

[20] The quantitative data include an additional county in each state.

judgeships in New Jersey are at least perceived to be influenced by financial and social capital. Of course, like any political appointment, the appointment of judges in New York may be influenced by financial or social capital as well; however, unlike in New Jersey, no New York court actors ever raised this subject or even hinted at this possibility.

The New Jersey Administrative Office of Courts (AOC) supervises judges relatively closely (compared to the supervision of judges in New York). One example of this is the AOC's denial of my request to interview these judges in order to protect them from scrutiny (see chapter two). New Jersey judges are evaluated every few years through a standardized review process. And, their supervisors review statistics, especially statistics of how quickly they dispose of cases, and may pressure them to move more quickly.

2. Prosecutors' Offices

There are two main organizational distinctions between the prosecutors' offices in the juvenile and criminal jurisdictions I studied. One is that due to the offices' administrative policies, the juvenile jurisdiction prosecutors have less experience than the criminal jurisdiction prosecutors, overall. The second is the level of centralization of the prosecutors' offices – relative to one another the juvenile jurisdiction prosecutors' offices I studied were very decentralized with regard to discretion.

The prosecutors' offices in both New Jersey juvenile jurisdiction courts I observed use the juvenile jurisdiction as a training ground for newly hired prosecutors. Juvenile jurisdiction courtrooms are the first or second stop for prosecutors recently hired out of law school. These prosecutors gain experience and learn their craft while working with adolescent defendants, prior to being transferred to criminal jurisdiction courts. The average age of prosecutor interview respondents in the New Jersey juvenile jurisdiction is thirty-five, and these respondents average 3.0 years of experience in court.

For these prosecutors, working in the juvenile jurisdiction is of lower status than working in a criminal jurisdiction:

> Here it is kind of like - it is looked down upon if you are in juvenile, because you know you have to work your way up. (#29)
>
> Interviewer: You said you're looking forward to being transferred out of juvenile. Is this because juvenile court is a less desirable place to work, or because it's the natural progression [to move up to criminal court]?
> Prosecutor: [It's] not less desirable, but there is no jury trial. The goal of assistant prosecutor is to be trying jury trials. I think that is the whole idea behind it. I think juvenile court - but I haven't been to adult court - but juvenile court takes a lot out of you. It is tough. You see the same kids coming back in, and in, and in. There is nothing you can really do! It is kind of heartbreaking to see these kids everyday like that. It is very frustrating. (#27)

The lower status of juvenile jurisdiction is partly because there are no jury trials in the juvenile jurisdiction, and thus no possibility of winning in dramatic fashion by convincing a jury through legal maneuvering (which the prosecutors perceive to be glamorous). Furthermore, the lower status is also due to the difficult nature of the job

(the frustration of seeing youth repeatedly involved in crimes), and partly because of the stigma of being the training ground for young prosecutors.

Yet despite their relative inexperience, prosecutors in the New Jersey juvenile jurisdiction have great discretion in handling cases. According to one of the more senior juvenile jurisdiction prosecutors:

> Interviewer: When making these decisions, how does it work as your office goes? Are you required to seek approval from [the supervisor]?
> Prosecutor: We make a unilateral decision. Our juniors have to come to us because they are learning, but we don't because she trusts our judgment. Which is why she wants four senior people here within the trial section. Who have been in the pre-indictment section, then the Grand Jury, then all that stuff and actually knew what charges were and what sort of punishment should be meted out. (#15)

And, according to a more junior juvenile jurisdiction prosecutor:

> Juvenile is ...frankly, a lot left up to our discretion. It really is. We can do it by what we think is right. (#27)

When they first begin working in the prosecutor's office, the juvenile jurisdiction prosecutors receive daily advice from their supervisors, and the supervisor must approve all potential dispositions. But after a few months, the prosecutors gain discretion to fashion their own dispositions and only are required to seek approval for dispositions of cases in which incarceration might be a result. Because discretion of how to handle cases is left to these prosecutors after only a few months' experience, I consider these offices to be decentralized.

3. Defense Attorneys

The organization of defense attorneys' offices varies between the two jurisdictions as well. In the New Jersey juvenile jurisdiction, the defense attorneys are centralized within a single office in each court. Almost all defendants are represented by public defenders. In each New Jersey juvenile court, there is a single office for public defenders – in Pierce County eight attorneys in this office handle juvenile cases, and six in Walker County. In cases with more than one indigent defendant, a public defender represents one defendant and pool attorneys represent others. Pool attorneys are private attorneys who are paid by the county to represent indigent defendants. Again, it is extremely rare in the juvenile jurisdiction to see defendants represented by private attorneys, though this occasionally happens.

The public defenders are a stable and consistent group who represent the vast majority of New Jersey juvenile jurisdiction defendants. These attorneys are stationed in the juvenile jurisdiction courtrooms rather than entering and exiting throughout the day for isolated cases (as in the criminal jurisdiction). As a result the defense attorneys' appearances are far more consistent in the juvenile than in the criminal jurisdiction, where attorneys appear for specific cases and then leave to go to other courtrooms. Furthermore, the range of attorneys is far smaller in the juvenile jurisdiction because the public defenders handle almost all of the cases. The six or eight public defenders in each county, plus perhaps two or three frequently appearing

pool attorneys, represent about 95% of all defendants. Furthermore, there is very little turnover among these juvenile jurisdiction public defenders, especially in Pierce County were the most junior among them has been in the office for over ten years.

The stability of public defenders allows them to organize as a coherent group and exercise power over the courts. According to juvenile jurisdiction public defenders, they present a ubiquitous and subtle threat to take more (or all) cases to trial. This threat to discontinue plea bargaining is much like a labor union's implicit threat to strike, and this threat is effective at achieving two crucial objectives. They are able to lower the bar with regard to going rates of punishment (so that sentences are more lenient across the board than they would otherwise be), and to prevent judges from straying from the plea agreements between the defense and prosecution in most cases. As one public defender stated to me in court:

> 'The judges here are well-trained. Some judges come here thinking that they'll be punitive, but they get tired of fighting with us on every case. The prosecutors are afraid to piss off the judges by arguing or fighting too hard, so we're able to force lenient dispositions.'

Due to their experience and the stability of their appearances in court, the defense attorneys are able to exercise power in court with regard to controlling the pace of hearings and "winning" battles over dispositions (see Emmelman 1996).

Stability of Membership

According to scholars who have studied courts as local legal communities, the stability and familiarity of courtroom workgroups – also referred to as a robustness of shared pasts (Ulmer 1997) – shapes court proceedings. It does so by enhancing the exchange of information (both explicitly and through gossip networks), reducing uncertainty of others' potential actions, and facilitating the development of shared understandings of offenses and offenders (eg. "going rates" and "normal defendants") (Eisenstein and Jacob 1977; Eisenstein et al. 1988; Emerson 1969; Sudnow 1965; Ulmer 1997). By this logic, plea bargaining is more frequent and more consistent in court communities with stable and familiar workgroups, with similar offenders receiving similar sanctions.

Overall, the courtroom workgroups in the New Jersey juvenile jurisdiction are very stable – much more stable than in the New York criminal jurisdiction. The pool of defense attorneys and prosecutors who work in the juvenile jurisdiction is very small. In each of the New Jersey juvenile jurisdiction courts the same prosecutors work before the same judge every day, and one of a handful (six in Walker County, eight in Pierce County) of public defenders is in court and represents the vast majority of defendants on any given day.

The turnover of judges is uncommon in the New Jersey juvenile jurisdiction – most judges are secure in their positions and leave only through retirement. Among defense attorneys, turnover of the juvenile jurisdiction court staff is exceptionally rare. The turnover of prosecutors is higher than that of either judges or defense attorneys;

prosecutors in the New Jersey juvenile jurisdiction generally leave the juvenile jurisdiction for the criminal jurisdiction once they receive a sufficient amount of training.

Thus the juvenile jurisdiction court communities consist of stable and familiar workgroups. In the juvenile jurisdiction, the same people work together on a regular basis. They quickly learn each others' habits and personalities, and usually form bonds of friendship or at least professional cooperation and compromise. According to one defense attorney:

> …As far as the resolution is concerned, what the disposition of the case is going to be, usually we try to….we try to compromise to sort of meet in the middle ground. I think that's where you can leave it at. These cases are compromises more often than not. It's not too often that either one side is going to get exactly what they want. (#26)

> Yes, [the public defenders] are a good group….at least the ones we come into contact with. We don't have as much contact with the group that is regularly over with [the other judge], but the group we do have contact with is a pretty good group. (#31)

Though prosecutors and defense attorneys see themselves as representing different sides, there is undoubtedly a spirit of cooperation between prosecution and defense with regard to sharing "facts." One defense attorney stated to me that defense and prosecution often help each other by providing discovery materials (evidence they have collected) even when not required, or by allowing for continuances if needed by the other side. They may disagree on interpretations or accuracy of the facts, or on

how much a case with given facts is "worth," but they work together by sharing information.

According to the juvenile jurisdiction defense attorneys, building a rapport with prosecutors and judges enables them to work more effectively by earning respect and credibility. With such a rapport, the attorneys feel that they are not second-guessed or questioned, and their opinions of what a case is "worth," or their arguments about the character of a defendant, are taken seriously. One attorney offered the following comments about the importance of maintaining one's credibility:

> The thing that we have most in this court is credibility. So I don't ever say that a kid with twelve armed robberies or something that has been here a million times…I don't say, 'Please let him go.' I don't make a pitch that is a baloney pitch. I know what the cases are and no judge is ever going to say, 'Well, that's silly.' In other words, I will never do anything to ruin my credibility with the court and neither will anybody else here. … (#12)

Of course, this cooperative nature and ability to predict each other's actions occasionally breaks down in the New Jersey juvenile jurisdiction. Defense attorneys, prosecutors and judges do not always agree with one another. Personality clashes may arise, and when this happens the significant familiarity of court actors leads to relatively less cooperation among people who know each other well and dislike each other. The most dramatic breakdown of communication or expectations comes when a judge rejects a plea bargain agreed on by the defense and prosecution. I only observed this occur once, when a judge refused to accept a negotiated plea because (in her words) the negotiated sentence made the court "look bad" by not punishing the youth

for repeated non-compliance and delinquent activity. This led to a heated argument between the public defender and the judge, during which the judge stated "When you have more control over yourself let me know." At that point the judge left the courtroom for about five minutes. Normally this situation is avoided because the defense and prosecution learn to anticipate what the judge will accept, or because the judge tells them what she will accept as a sentence. This was an exception to the normally smooth cooperation of juvenile jurisdiction courtroom workgroups, but an interesting occurrence nonetheless.

Overall the New Jersey juvenile jurisdiction consists of courtrooms with non-threatening décors in relatively unadorned courthouse buildings. Judges working in these courts are relatively closely supervised, prosecutors have great discretion, and a small number of defense attorneys handle most cases. These courtroom professionals are very familiar with one another, and their interaction is relatively cooperative.

New York Criminal Jurisdiction

Physical Setting

There is no question that the New York criminal jurisdiction courtrooms are more threatening architecturally (see Carlen 1976) and more imposing settings than the New Jersey juvenile jurisdiction courtrooms (see also Bortner 1982). Both New York criminal jurisdiction courtrooms are housed in large, marble buildings with high ceilings, chandeliers, marble columns and broad stairways leading to the entrances.

Both are large courtrooms with several rows of seating for an audience, floors of grey linoleum tiles and a dingy and official atmosphere. Overall, both counties have grandiose courthouses and dingy courtrooms similar to what one might see on a television court drama.

An important distinction between the physical settings of the juvenile and criminal jurisdiction courtrooms is the presence of spectators. In contrast to the privacy of the New Jersey juvenile jurisdiction, the New York criminal jurisdiction courtroom benches often are filled at the beginning of the day by defendants and their families. On an average "calendar" day, at least twenty to twenty-five people are seated in each of these two courtrooms at the start of the day's business. Thus there is an audience of interested spectators in the New York criminal jurisdiction.

Organization of Court Work

1. Judicial Benches

In New York, there are two methods by which a judge can come to preside over a criminal jurisdiction youth part. One, she can be elected by a judicial selection committee to serve a fourteen-year term as a Supreme Court judge. Judges must nominate themselves to the committee and lobby by using any available community and political leverage; according to one of the judges, this fourteen-year term is almost always followed by re-appointment. The second method is to be appointed by the

Mayor of New York City to serve as a lower Criminal Court Judge for a ten-year term, and then be reassigned to the Supreme Court by the Administrative Office of Courts.

The Administrative Office of Courts (AOC) supervises New York City judges and can reassign them to different positions within the judiciary. However, according to both New York youth part judges, this office provides very little supervision. The AOC does not instruct judges to operate in any particular manner on the bench, and would only be able to remove someone from office in the case of serious or illegal misconduct. Thus, the judges are supervised by an office that is not responsible for appointing them or renewing their appointments, and that exerts little supervision over them. As a result they have a high degree of autonomy. According to one criminal jurisdiction judge:

> …A [Criminal] Court elected judge is a constitutional judge and it is a fourteen-year appointment that can't be disturbed except for removal. The notions of punishment and the like for performance, unless we're talking about incompetence or deficiency or malfeasance, I've never heard of it. … But there is really no evaluative process to speak of. We never have a sit-down review where I'm told that I am deficient or that I have to improve in an area or there is some sort of written evaluation. It's not done. (#2)

2. Prosecutors' Offices

Though there is a wide range of ages and levels of experience, the prosecutors (Assistant District Attorneys) in the New York criminal jurisdiction are older and have significantly more experience than the New Jersey juvenile jurisdiction prosecutors. They are not in training, though most of them are at a relatively junior level within

their offices. The average age of criminal jurisdiction prosecutors I interviewed is forty-one years, with an average of approximately 7.8 years of experience; these figures are significantly higher than in the New Jersey juvenile jurisdiction (thirty-five years old and 3.0 years of experience). According to the prosecutors with whom I spoke, due to their relatively low pay, many attorneys who begin their careers as prosecutors leave to become private attorneys, a potentially more lucrative position. Thus many prosecutors leave after several years, with the result of a fairly young crew of prosecutors (though not nearly as young or inexperienced as in the juvenile jurisdiction).

In contrast to the decentralization of prosecutors' offices in the New Jersey juvenile jurisdiction, criminal jurisdiction prosecutors in both Brady and Brown Counties operate within a far more centralized office. Prosecutors from a single bureau of their counties' District Attorneys' offices staff both of the youth parts I observed in New York. The supervisor of each bureau (a section of the District Attorney's office) makes all decisions with regard to arguing for remand, considering dismissals, and requesting sentences. Unlike the prosecutors in the juvenile jurisdiction (after a few months on the job), criminal jurisdiction prosecutors must take any plea bargain offer to their supervisor for approval:

> If we already have a [plea bargain] offer set, and they counter with something, normally I would just go to [the supervisor] with the counter and say, 'What do you think?' Sometimes if it is completely ridiculous, I don't even bother going to her. If it's something even I wouldn't accept. Then I don't bother and just

> say ‘no’ myself. But if it’s something that I would consider, then I go to [the supervisor] and ask her what she thinks and we take it from there. (#22 – defense attorney)
>
> I’ve been a prosecutor for over six years now and it’s not nice not to have any control over your [plea bargain] offers. I would hope that the office would have enough faith in my judgment that I would make appropriate choices and appropriate decisions. And I think I do but the way our office is structured, I just have to say, our office’s recommendation is whatever it is. (#23 – prosecutor)

This centralization and lack of discretion inhibits team-work and impedes plea bargaining, because the defense attorney negotiates with the prosecutor’s office rather than with a single individual. This feature also delays dispositions by adding levels of approval to the negotiation process:

> You can’t negotiate one on one. [The prosecutors] don’t have the authority to do that. When they go into the courtroom, the supervisor has told this, ‘This is what the plea offer is.’ And to give you a perfect example, if the plea offer that they are recommending is two to four [years, with] four years incarceration. And you have a client who is willing to take one and a half to three [years]. They just can’t say ‘fine.’ Which I think is absolutely ridiculous, especially with some of the senior people. You have somebody who has been in the prosecuting office five to ten years and they can’t come down six months on a plea, something is wrong. … It makes the process slower. (#21 – defense attorney)

In contrast to the New Jersey juvenile jurisdiction – in which a plea bargain offer from a defense attorney can be accepted by a prosecutor and the case can proceed without delay – upon receipt of a plea bargain offer in the New York criminal jurisdiction the case must be adjourned for the prosecutor to discuss it with her supervisor.

3. Defense Attorneys

In the New York criminal jurisdiction, there are four categories of defense attorneys working in each youth part. The distinction between them corresponds to how they are paid and to what organization they belong. In the first category are attorneys who work for the Legal Aid Society, which is publicly funded but a separate entity from the court system. The Legal Aid Society used to handle almost all cases with indigent defendants in the city until a few years ago when a dispute with Mayor Giuliani left them financially weak and having lost their near monopoly of public defense. Now they handle about half of the cases, with no apparent pattern to which cases they assume and which they leave for other agencies.

The second category is the [County] Defender Services, which is an agency created in the past few years to help absorb some of the cases that Legal Aid Society is no longer able to assume. According to a Legal Aid attorney:

> When our funding was cut in '95, alternate providers [the County Defender Services] were set up so each borough has an alternate provider except in Staten Island where we were completely defunded. (#6)

The third category is 18B attorneys. The code "18B" refers to the statute authorizing the courts to appoint these attorneys. These are private attorneys who register with the 18B office to assume cases with indigent defendants that are not assigned to either the Legal Aid Society or [County] Defender Services. Often this occurs because co-defendants may be represented by the two indigent defense

agencies, and a non-affiliated attorney is needed to prevent a conflict of interests between attorneys in the same agency representing different co-defendants on the same case. The State pays for the defense of these defendants, at a flat rate of $40.00/hour for in-court time, and $25.00/hour for out-of-court time. A single office assigns these cases, with no distinction between cases of adolescent offenders and older defendants. All respondents with whom I spoke perceive this pay scale to be exceptionally low, and a recent series of critical articles in the New York Times described these attorneys as so underpaid that many are forced to take on hundreds of clients (with one attorney taking on well over a thousand) in order to sustain a living wage (Fritsch and Rohde 2001a, 2001b, 2001c; see also Baldwin and McConville 1977).

Members of each of these three categories of attorneys assume cases by appearing in arraignment courts. Defendants who are arrested face a lower court arraignment within twenty-four hours of arrest – at this point attorneys are assigned to those who cannot afford to pay for private attorneys. Attorneys from Legal Aid Society and each [County] Defender Service alternate which arraignments they cover. Legal Aid Society covers the majority of arraignments (usually about two-thirds), with [County] Defender Services covering most of the rest. Attorneys who take 18B cases also sit in on arraignments. Each 18B attorney agrees to cover a certain number of shifts per month and assume any cases that can not be taken by the other two groups of attorneys.

The fourth category is private attorneys who are paid by the defendants themselves. This may be the only option for a defendant who is deemed by a judge (in a court hearing during which the defendant shows proof of her financial status) to be able to pay for her own defense. Most private attorneys charge one of two flat fees for their services; whether the case proceeds to trial or is disposed of by a guilty plea determines which of the two fees the defendant pays. Though no figures are available to illustrate how often defendants are able to hire attorneys, my observations and conversations with court staff suggest that about 90% of the criminal jurisdiction defendants are considered indigent and represented by one of the former three groups of attorneys.[21]

Stability of Membership

In contrast to the stability and familiarity of courtroom workgroups in the New Jersey juvenile jurisdiction, there is little rapport building or sharing of information between defense and prosecution in the New York criminal jurisdiction. Because of the large populations of prosecutors and defense attorneys who may appear on different cases in the criminal jurisdiction, the two individuals involved in any particular case sometimes have never met one another. As strangers facing one

[21] The defense attorney may announce her status as a private or court appointed attorney when she states her organizational affiliation while reading her appearance into the record at the start of each hearing. Or, it may be expressed when the court actors discuss monetary bail, a discussion which often includes the topic of the defendant's financial status and inability to pay a high bail amount.

another there is no incentive to build a rapport or help someone out (by sharing information or not opposing a continuance) in order to build a solid working relationship. Rather than a handful of defense attorneys in court everyday, any of about twenty-five to thirty defense attorneys work sporadically in each criminal jurisdiction youth part, and any of about fifteen to twenty prosecutors.

In addition, judges are less integrated into the courtroom workgroups of the New York criminal jurisdiction than the New Jersey juvenile jurisdiction. Again, this is because the same defense attorneys and prosecutors appear before the same judges every day in the juvenile jurisdiction, but not in the criminal jurisdiction. New Jersey juvenile jurisdiction judges work with the same workgroup daily, though New York criminal jurisdiction judges face a wide variety of attorneys and prosecutors.

There is one similarity between the two jurisdictions with regard to courtroom stability of membership: the patterns of staff turnover. Like the New Jersey juvenile jurisdiction, the turnover of judges is uncommon in the New York criminal jurisdiction – most judges are secure in their positions and leave only through retirement. Judges can be promoted to supervisory or administrative judgeships, though this happens rarely due to the small number of such positions relative to the number of judges. Likewise, defense attorneys in the criminal jurisdiction demonstrate fairly stable careers with few career changes. Turnover among (usually low-paid) prosecutors in New York is more common; often they leave to pursue more lucrative positions.

Thus, overall the New York criminal jurisdiction consists of dingy courtrooms in massive marble courthouses. Judges working in these courts are relatively unsupervised, prosecutors have little discretion, and a wide variety of defense attorneys sporadically appear in court for specific cases and leave directly afterward. These courtroom professionals are very distant from one another, and interact in a much less familiar or cooperative manner than the actors of the New Jersey juvenile jurisdiction.

Court Differences Within Jurisdictions

New Jersey Juvenile Jurisdiction

Overall, the two different county-level courts within each jurisdiction are very similar with regard to physical setting, organization of court work, and stability of membership. Only a few distinctions emerge among these courts.

One distinction is the method of training junior level prosecutors in the New Jersey juvenile jurisdiction. In Pierce County, recently hired prosecutors work alongside a senior prosecutor in each courtroom for approximately six months or until a position opens up in the criminal jurisdiction, at which time the new prosecutors are transferred there. Yet in Walker County, all but one prosecutor are recent hires. Newly hired prosecutors in Walker are assigned to the juvenile jurisdiction after a brief assignment working in appellate court, have no in-court supervision, and usually stay in the juvenile jurisdiction for about a year – twice as long, on average, as junior

level prosecutors remain in the Pierce County juvenile jurisdiction. The one more experienced prosecutor in the Walker County courts is an irascible older man whom (according to court gossip) his office had demoted to the juvenile jurisdiction with the hope that he retires (thus not a supervisor).

A second distinction between courts is the method of scheduling defense attorneys' appearances in the juvenile jurisdiction courts. In Pierce County, one member of the public defender's office is in each courtroom everyday for the entire day – each public defender schedules a few days per month before each judge in advance, and arranges to have her cases with that judge called on those days. In Walker County, public defenders stay in one courtroom for a week at a time, and then have one week out of court for office work.

Finally, significant distinctions emerge between the two New Jersey juvenile courts with regard to the balance of power within each court's courtroom workgroup. This balance varies across each of the courts I observed, largely as a result of each judge's personality and approach to running a courtroom.

In the Pierce County juvenile court, the balance of power rests with the defense attorneys. Defense attorneys in this court are very aggressive and well-organized, as I describe above. Their ubiquitous and subtle threat to take more (or all) cases to trial is much like an effective labor union's implicit threat to strike, and this threat is effective at achieving two crucial objectives. They are able to exercise their power by lowering

the bar with regard to "going rates" of punishment (see Sudnow 1965), and usually they prevent the judge from straying from their agreements with prosecutors.

Defense attorneys in the Walker County juvenile court also are well organized and use their influence to lower going rates of punishments. Yet their influence is limited by one of the two judges in this court, the senior judge. The senior Walker County judge has a hard-nosed, punitive approach to dealing with adolescent offenders (relative to the other juvenile jurisdiction judges). This approach gives a significant advantage to the prosecution in this one courtroom. In this courtroom, the prosecutors know that the judge will reject a plea bargain he perceives as too lenient based on offense severity, giving the prosecutors the upper hand in bargaining and allowing them to dominate proceedings. However, the second judge in Walker County has a more lenient approach and softer disposition. This more junior judge is relatively more interested in background information such as the defendants' home lives and school records. As a result, the defense attorneys can offer mitigating evidence by presenting positive character assessments of defendants. When appearing before this judge, the defense attorneys have the upper-hand in negotiation because they know the judge will reject a plea bargain he considers too harsh, and can exert their collective influence over case processing.

New York Criminal Jurisdiction

One significant distinction between the two criminal jurisdiction courts is the consistency of prosecutors within the courtroom workgroups. In Brown County, a single prosecutor is in court every day and handles most mundane matters (all cases except for trials or special offenses such as rape, gang assaults and murders). Yet in Brady County a different prosecutor – though one from the same bureau consisting of approximately twelve attorneys – appears daily. Thus, the workgroup is somewhat more stable in Brown than in Brady.

In addition, the personalities of judges vary in the two courts in the New York criminal jurisdiction, and shape the balance of power differently in these two courts. In Brown County, the judge is a dominating, arrogant figure. He clearly expresses his expectations for all attorneys who work in his court, and voices his disapproval when attorneys fail in any way to meet his expectations. He demands that all attorneys arrive at his courtroom by 10:00 AM, regardless of any other cases they may have scheduled on any given day – other judges are far more understanding of attorneys who must appear in several courts in a single day, and usually will make exceptions to any schedule in order to accommodate the attorneys' busy schedules. In the following court fieldnotes I demonstrate this judge's sense of self-importance by showing how he treated an attorney who appeared in court one hour late:

> The judge begins the hearing by scolding the defense attorney for showing up late here this morning.
>
> Judge (to defense attorney): 'Do you want to discuss the defendant first, or have your sanction hearing?'

> At this, the defendant looks at his attorney and laughs.
>
> The attorney has no coherent answer, but says he is ready to account for his tardiness, and he apologizes.
>
> Judge: 'Fine, then we'll conduct your sanction hearing now. Do you have an explanation?'
> Defense Attorney: 'I was in domestic violence court and had a very ill client. Because of this I was hung up. I intended to be here on time, or to call, but I had no opportunity.'
> Judge: 'Have we spoken about this before?'
> Defense Attorney: 'Yes'.
> Judge: 'You must show at 10:00 or call by then. I can't run a part like this. I accept your apology without a financial sanction, but next time there will be a "painful" sanction.'

This judge often tells both prosecutors and defense attorneys to refuse any new cases while they have cases pending in his court, yet he has no authority to make this demand and the individual attorney or prosecutor often has no discretion over this matter. And, he subordinates both the prosecution and defense and dominates the flow of cases and decisions made in each case.

The other criminal court, in Brady County, is presided over by a judge with a more democratic style. As a result there is a very even balance of power, with court proceedings and outcomes shaped evenly by the judge, prosecutor and defense. This judge's approach is very different than that of the Brown County judge. He runs a very relaxed courtroom and is far less demanding than the Brown County judge. For example, every day he asks the court clerks, security officers and stenographer when they wish to break for lunch, rather than unilaterally setting the court's schedule.

Attorneys show up when they can to this court, and the judge accepts this practice as long as they show respect to the court and make an effort to call in advance (though he still does not become upset when attorneys are unable to call beforehand). Everyone working in the courtroom with whom I spoke recognizes his egalitarian approach. During several interviews with attorneys the respondents noted that this judge is extremely fair, listens to everyone before making any decisions, and weighs the arguments of the defense and prosecution evenly.

Conclusion

Thus, the New York criminal jurisdiction and New Jersey juvenile jurisdiction are very different from one another with regard to their physical settings, organization of court work, and stability of membership. These jurisdictional distinctions are much greater than the distinctions among courts within each jurisdiction type. With this brief description of the New York criminal jurisdiction and the New Jersey juvenile jurisdiction in mind, I continue in the following chapters by analyzing the models of justice that are pursued in each jurisdiction type.

CHAPTER 4: FORMALITY

In this chapter I continue with my test of whether the conventional understandings of juvenile and criminal justice actually are put into practice during the processing of adolescents in juvenile and criminal jurisdictions. I analyze the first of the three dimensions that differentiate between criminal and juvenile justice, formality of case processing, by comparing the degree of formality of court proceedings for adolescents processed in the New Jersey juvenile jurisdiction and the New York criminal jurisdiction.

I answer one central question in this chapter: does jurisdiction affect the degree of formality of case processing? I compare my courtroom observations and interviews in the New Jersey juvenile jurisdiction and the New York criminal jurisdiction to examine three aspects of formality that prior research identifies as important: composition of courtroom workgroups, style of courtroom interaction, and the roles of defendants and their families in case processing. If I find that case processing in the New York criminal jurisdiction is more formal than in the New Jersey juvenile jurisdiction – that is, that they practice a more adversarial style of proceedings, have a narrower courtroom workgroup involving only legal professionals, and prohibit participation of defendants and their families – then I can conclude that adolescents processed in criminal rather than the juvenile jurisdictions are treated more formally. Hence, with regard to formality of case processing, juvenile justice is practiced in

juvenile jurisdictions and criminal justice in criminal jurisdictions. If, however, I find either no difference across jurisdictions, or relatively less formal case processing in the criminal than the juvenile jurisdiction (with a less adversarial style of proceedings, a courtroom workgroup including treatment professionals such as social workers and counselors, and participation of defendants and their families), then my data fails to support the prior research and political rhetoric arguing that criminal justice is pursued when adolescents are processed in the criminal jurisdiction (see Howell 1996; National District Attorneys Association 2000). In this case, I will consider how the two jurisdictions vary along this dimension: this could mean that both rely on a criminal justice model, both rely on a juvenile justice model, or that (paradoxically) the criminal jurisdiction produces juvenile justice and the juvenile jurisdiction produces criminal justice.

I analyze qualitative data to examine formality of case processing across jurisdiction. After reviewing the existing literature on level of formality across criminal and juvenile jurisdictions, I analyze the data with regard to three characteristics of formality of case processing: (1) the composition of the courtroom workgroup, (2) the formality of courtroom interaction, and (3) the roles of defendants and their families. As I make these comparisons, I describe the case processing in

each jurisdiction across two stages – the initial stage of case processing and the sentencing phase.[22]

In this chapter I focus on a jurisdictional comparison rather than a comparison of the two courts within the juvenile jurisdiction and the two courts within the criminal jurisdiction. I restrict my analysis to jurisdiction because the formality of case processing is extremely similar across courts within each jurisdiction, with only small incremental court differences. Thus, I find no support for prior arguments that the distinctions between local legal cultures will result in different levels of procedural formality across courts within jurisdictions (see Dixon 1995; Eisenstein et al. 1988; Flemming et al. 1992; Nardulli et al. 1988; Ulmer 1997). Instead, significant jurisdictional differences account for most of the variation I find between adolescent cases processed in courts in the New Jersey juvenile jurisdiction and the New York criminal jurisdiction.

Prior Research on Procedural Formality

According to the conventional criminal justice model, formal due process rules guide courtroom interaction. Relative to juvenile jurisdictions, criminal jurisdictions are designed to be formal procedural institutions in which an adversarial process

[22] I refer to the sentencing phase not as a formally declared hearing following official conviction, but as discussions that involve a consideration of sentence assuming conviction. These discussions often precede formal conviction, but do not occur until all workgroup members have implicitly agreed that the case will soon lead to conviction, at which point they begin to negotiate a sentence in exchange for a guilty plea.

protects both the state from guilty offenders (by ensuring aggressive prosecution), and the accused from wrongful conviction. Hence, courtroom workgroups primarily include defense attorneys and prosecutors who contest legal and factual issues while judges preside over cases, with hearings proceeding according to due process rules. Although some scholars describe criminal jurisdiction workgroups as cooperative teams rather than adversaries (eg. Blumberg 1967; Packer 1964, 1968), the procedural rules of criminal jurisdictions – even in a "crime control model" (see Packer 1964) – result in a relatively more formal style of case processing than found in juvenile jurisdictions (Feld 1999). This relative difference in formality between juvenile and criminal jurisdictions is the reason why some scholars advocate abolishing the juvenile jurisdiction in an attempt to protect juveniles from invasive and informal juvenile jurisdiction proceedings (Ainsworth 1991; Federle 1999; Feld 1987, 1999).

In contrast to the relative formality of the criminal jurisdiction, the original juvenile courts, created at the turn of the twentieth century in Chicago, were intended to be less formal institutions. The Progressive-era founders of the juvenile justice system attempted to dispense with legal formalism in order to prevent formality from impeding the court's social welfare mission. Rather than having attorneys debate legal issues, the court founders envisioned juveniles talking freely about their problems with a judge and a probation officer. They believed that caring judges acting in the juveniles' best interests should be unencumbered by legal restraints as they attempt to

uplift wayward youth. Moreover, the Progressives professed that without being limited by legal formalism, court actors could better address the underlying problems causing delinquency (Platt 1977; Rothman 1980; Ryerson 1978).

Recent comparisons of juvenile and criminal jurisdictions also describe juvenile jurisdictions as relatively less procedurally formal. Barry Feld (1999), for example, repeatedly calls the juvenile jurisdiction "a scaled down second-class criminal court" because juveniles are punished yet they do not receive adequate legal representation or other necessary procedural rights. Feld argues that juveniles often are punished as severely as – if not more severely than – their counterparts in the criminal jurisdiction. This happens because many juveniles are not represented by attorneys, and juvenile jurisdictions forego important due process protections in an attempt to rehabilitate delinquents. Thus he claims that the less formal procedural nature of juvenile jurisdictions hurts defendants by denying due process protections available in the criminal jurisdiction while allowing punishment similar to that handed out to adults (Feld 1987, 1998, 1999). Furthermore, in his critical depiction of French juvenile courts, Jacques Donzelot (1979) likewise describes this jurisdiction's relative informality:

> The conventional confrontation between prosecutor and defense counsel, their rhetorical jousting, is thus relegated to the background by a new ordering of discourses, staggered according to a hierarchy of expertise [hiérarchie technicienne] that precludes any possibility of contradictory debate. (pp. 107-8)

In *In re Gault* (1967), the U.S. Supreme Court recognized the problems inherent in less formal procedures for the juvenile jurisdiction. In this decision, the Supreme Court describes the juvenile jurisdiction as being "a kangaroo court" in which adolescents receive the worst of both worlds – punishment similar to that prescribed in a criminal jurisdiction but without the advantages offered by due process in a criminal jurisdiction. The Supreme Court decided that like criminal jurisdiction defendants, juvenile jurisdiction defendants who risked being sent to custodial institutions have several rights previously denied to them: the rights to legal counsel; to adequate, written, and timely notice; to cross-examine witnesses; and the privilege against self-incrimination (Bernard 1992; Feld 1999; Manfredi 1998).

Even after the Supreme Court's decision that adolescents in the juvenile jurisdiction must receive these procedural rights previously denied to them, many still argue that juvenile jurisdictions are procedurally less formal than criminal jurisdictions. For example, juvenile jurisdictions but not criminal jurisdictions involve defendants' families in case processing; relative to criminal jurisdictions juvenile jurisdictions rely more on social workers and private treatment providers; juvenile jurisdictions are less wedded to a formal adversarial process; and most juvenile jurisdictions do not allow a right to trial by jury (eg. Bortner 1982; Feld 1999; Jacobs 1990).

Prior research on juvenile jurisdictions finds that courtroom workgroups include treatment professionals and other external sponsoring agents beyond the

workgroup triad (prosecutor, defense attorney and judge) to which criminal jurisdiction courts traditionally are limited. For example, Emerson (1969) finds that juvenile jurisdiction court communities include active participation from several external sponsoring agencies. A network of interlocking social welfare agencies such as probation and mental health care providers are particularly prominent in his account. The interaction between courtroom actors and these sponsoring agencies results in complex relationships that shape prosecution and sentencing. Thus, the workgroups in a juvenile jurisdiction may involve a larger number of participants than in a criminal jurisdiction (see also Donzelot 1979).

Additionally, previous studies find that defendants and their families have a direct participatory role in juvenile jurisdiction case processing (Bortner 1982; Emerson 1969). In contrast, scholars who describe criminal jurisdiction case processing portray court hearings as often being unintelligible to defendants, who have little or no direct participatory role (eg. Carlen 1978; Feeley 1979).

In sum, prior research in various venues suggests that relative to a criminal jurisdiction, case processing in a juvenile jurisdiction is less adversarial, relies on a larger workgroup including external sponsoring agencies, actively involves defendants and their families, and is less formal overall. Yet no prior research uses qualitative data to compare systematically the formality of case processing of adolescents in juvenile and criminal jurisdictions. As a result, it is unclear whether the processing of adolescents in juvenile and criminal jurisdictions differs with regard to composition

and formality of courtroom workgroups. I use the data from my court observations and interviews with court actors in the New Jersey juvenile jurisdiction and the New York criminal jurisdiction to determine whether the distinctions in formality suggested by the criminal and juvenile justice models hold true. To present these data, I discuss each of the two jurisdictions separately, and analyze formality of case processing for each of the two stages of case processing – prior to sentencing and during sentencing – in each jurisdiction.

New Jersey Juvenile Jurisdiction

Prior to Sentencing

1. Composition of Courtroom Workgroups

Aside from the judge, prosecutor, defense attorneys and administrative court staff (eg. bailiffs, clerks), several other sponsoring agencies participate in the prosecution of adolescent offenders in both jurisdiction types. These external sponsoring agencies shape court proceedings by presenting information or proposing solutions to problems.

In the New Jersey juvenile jurisdiction, a wide array of individuals who are outside of the judge-defense-prosecution triad participates in case processing. Their participation begins during the early stage of case processing, and continues throughout entire cases. These participants include representatives from: the juvenile shelter (a residential facility for homeless or abused/neglected youth), the Department

of Juvenile Justice (the state's juvenile prison agency), and the Department of Youth and Family Services (a family oriented welfare agency). In addition, probation officers and representatives from specific treatment or school programs participate in court proceedings. Representatives from these agencies are considered "regulars" by the court staffs – they come and go from the courtrooms with frequency and without interruptions, despite the fact that the hearings (by rule) are closed to the public or to anyone not involved in the particular case. They wear identification badges and are known by all court staff, thus they are allowed full access to observe court proceedings. Usually, they sit in court and observe hearings before and after the case in which they are participating; during this time they chat with each other and with court staff. These participants may be involved in cases from beginning to end – they aid the courts by providing information at all stages of case processing.

For example, one important contribution to juvenile jurisdiction case processing during the early stage of court proceedings occurs when probation officers, medical professionals or mental therapists evaluate a defendant and report to the court on the defendant's likelihood of success in a pretrial diversion program. Depending on this evaluation, the judge might consider such a program as an alternative to pretrial detention while the defendant's case proceeds.

One effect of the "regular" status of juvenile jurisdiction external participants is that their goals are fairly similar to those of the court staff. They are members of the same penal-welfarist juvenile justice system; because they seek to protect and treat

juveniles, but also to control and punish, their goals match the court's statutory mission. These regulars readily report defendants' negative behavior either to request the court's help in controlling the youth under their care or to maintain credibility among the courtroom workgroup. In sum, the external participants in the juvenile jurisdiction are members of the court "team" with a robust shared past (Ulmer 1997) and participate in case processing throughout entire cases.

2. Formality of Courtroom Interaction

Consistent with a juvenile justice model, the interaction of courtroom workgroup members in the New Jersey juvenile jurisdiction is informal throughout case processing. This informality characterizes both stages of case processing, and both courts in the juvenile jurisdiction. In contrast to the criminal jurisdiction, in which court actors frequently submit written motions regarding admissibility of evidence and defendants' statements, court actors rarely file legal motions in the juvenile jurisdiction. Rather, defense attorneys and prosecutors discuss their positions verbally in court. Veracity of police identification, for example, is debated in court during a probable cause hearing or a trial, rather than decided based on written motions. Even more frequently, juvenile jurisdiction defense attorneys use this type of issue informally during plea bargaining to suggest weaknesses in the prosecutor's case as a tactic to secure a reduced sentence:

> Winning 90% of the time is being able to convince the prosecutor that if it did go to trial they might not have such a good chance. As opposed to actually going to trial and winning the trial. So you look at the discovery when it's handed to you the day you show up for court and you say, 'Oh look, this is a search problem.' Or, 'Oh look, this is a Miranda problem.' 'Oh look this guy didn't do anything.' Or any kind of thing that can come up. (#10 – defense attorney)

Legal matters such as formal arrest charges and identification procedures (eg. how a witness identification lineup is conducted) are taken relatively lightly in the juvenile jurisdiction, as illustrated by the following hearing:

> When the judge asks for the status of the case, the defense attorney and prosecutor answer that they have failed to reach an agreement, and this case is going to trial.
>
> Judge: 'I'm looking at the three cases pending against the defendant, and really this is only two cases, because two of them are inter-related. Do you have any questions?'
> Defendant: 'Yes. I never saw a copy of the police report for one of the cases.'
> Judge (to prosecutor): 'Yes, case number [ ]. Can you show her that police report?'
> Prosecutor: 'There is no police report on that case, only the victim's statement. No report was ever filed.'

In this hearing, not only is the number of charges pending a flexible issue, but there is no police report on file for a case that is proceeding to trial – this lack of legal formality is in sharp contrast to criminal jurisdiction proceedings. Overall, in the New Jersey juvenile jurisdiction far less time is spent on "legal house-keeping" than in the New York criminal jurisdiction. Instead the judge, prosecutor and attorney spend more time discussing the defendants, offenses of which they are accused, and possible

outcomes of prosecution. In other words, the subject of prosecution and its most likely outcomes are discussed in place of legal procedures.

Furthermore, the court actors in the New Jersey juvenile jurisdiction use a far more relaxed conversational style than in the New York criminal jurisdiction, and recognize fewer formalized status distinctions between judge, prosecutor and defense. Consider, for example, the following interaction in court:

> Defense Attorney: 'This was either a disorderly persons or petty disorderly persons, so we request that he be released, now that he's been held this amount of time.'…
> Judge: 'This has come up before, raised by [other defense attorney], the argument that because it's a disorderly persons offense he can't be remanded. I respectfully disagree.'
> Defense Attorney: 'Can I go get my statute book? I'd be happy to read you the statute?'
> Judge: 'Sure, but I've got it right here.'
>
> The defense attorney leaves court for about two minutes then returns.
>
> Defense Attorney: 'I'm sorry, judge, my statute book is in the office. Could I borrow yours?'
>
> The judge then prints out the statute for the defense attorney and for the prosecutor.

During this hearing, the judge and defense attorney disagree about the meaning of a statute. In response, the attorney is sarcastic, challenging, and interrupts the hearing to fetch a book that he hopes will support his argument. This informal level of interaction simply would not be allowed in the criminal jurisdiction. Either New York criminal jurisdiction judge would have become very angry at the disrespectful tone of

the defense attorney, his sarcastic offer to read the statute aloud in court for the judge, and his act of leaving court to fetch his book. Yet this judge remains calm, prints out the statute, considers the argument and then sorts through the disagreement rather than reacting to the disrespect with hostility.

Although there are few people in the courtroom at any one time, and the courtrooms are small, the New Jersey juvenile jurisdiction judges allow people to converse with each other during hearings. Defense attorneys waiting for cases to be called frequently chat with each other, or even negotiate with the prosecutor while a case is being heard. This occasionally occurs while the prosecutor is participating in a hearing B she may make a statement to the judge, then turn around and have a side conversation while the defense attorney speaks. The judges and court officers allow this behavior as long as the conversations remain quiet and the people involved in the hearings are able to perform their duties without significant interruption.

3. Roles of Defendants and Their Families

In the New Jersey juvenile jurisdiction, case processing resembles a participatory, family-oriented model that incorporates defendants and their families. Both parents and defendants are primary courtroom participants throughout entire cases, beginning with the defendant's first appearance in court. The court requires that a parent, or a suitable substitute such as an Aunt/Uncle or a family friend, attends all

juvenile jurisdiction court hearings. If a parent knowingly fails to appear for her child's hearing, the judge issues an arrest warrant for her. Once hearings begin, the parents either stand (in Pierce County) or sit (in Walker County) directly next to the defendant. The judge actively seeks the participation of both the juvenile and her parents, as the judge asks either the defendant or the family (or both) direct questions. For example, most juvenile jurisdiction judges routinely ask parents "How is he/she behaving at home?" Furthermore, parental consent is a vital component of court dispositions – judges will not send a defendant home to a parent who refuses to accept her back – and the presence of a parent frequently determines whether the judge releases or detains the defendant at her first court appearance (see Matza 1964).

Moreover, judges often consult with defendants about how they are doing and what they want to happen as a result of their court cases. The following interaction is typical of juvenile jurisdiction court hearings:

> Judge: 'There's a proposal to change the detention status. Who else lives with you besides the defendant?'
> Mother: 'Me, my other son, [name], and my boyfriend.'
> Judge: 'What's your mother's boyfriend's name?'
> Defendant: 'I don't remember.'
> Judge: 'What other adults are in this household?'
> (Mother answers)
> Judge: 'Does he listen to you?'
> Mother: 'Yes'
> Judge: 'Do you want to take him home?'
> Mother: 'Yes'
> Judge: (to defendant) 'How often do you see your Dad?'
> Defendant: 'Almost every day.'
> Judge: 'That's terrific.'

> Judge: 'Here's my solution. He goes home and is under house arrest. He can only leave with his mother, father or a grandparent. And no female visitors under sixteen.'

As this interaction shows, the defendant and her mother are intimately involved in juvenile jurisdiction case processing even during early stages.

Hence, prior to sentencing, the New Jersey juvenile jurisdiction is marked by a courtroom workgroup including external sponsoring agents, informal interaction, and participation of defendants and their parents.[23] These characteristics clearly reflect a juvenile justice model of case processing, as hypothesized for the juvenile jurisdiction.

Sentencing Stage

1. Composition of Courtroom Workgroup

Consistent with a juvenile justice model, informality of case processing in the New Jersey juvenile jurisdiction is consistent throughout both stages of proceedings. During both the initial stage and the sentencing stage, the courtroom workgroup includes several external participants. Probation officers or treatment professionals assess defendants to prepare for sentencing as well as for diversion from pretrial detention. For example, one important contribution to juvenile jurisdiction case

[23] The involvement of parents in case processing might raise the question of whether male and female defendants receive different treatment in court. As I demonstrate in chapter six by way of the quantitative data I analyze, a small proportion of defendants in the courts I study are females (about 14% in my data). As a result of the small numbers of female defendants overall, I was able to observe relatively few cases involving girls, which makes qualitative comparisons difficult. Thus, comparing

processing by probation officers is to give the court pre-disposition reports on defendants for sentencing. Judges order these reports for cases in which incarceration is likely – if a plea bargain has been reached that involves a custodial sentence, or if a defendant loses at trial for a serious or violent offense. Pre-disposition reports summarize the defendant's prior court history, school achievement and attendance, family background and living situation, the reports of any counselors or therapists who evaluate the defendant, and a sentencing recommendation by the probation officer.

2. Formality of Courtroom Interaction

Above I describe an informal interaction style for case processing in the New Jersey juvenile jurisdiction during early stages of proceedings. This is true throughout case processing, and during the sentencing phase as well. Mirroring the informality of the early stage, during sentencing the prosecutor, judge and defense attorney discuss cases informally and reach a consensus about how to dispose of cases.

3. Roles of Defendants and Their Families

Finally, I find that the participation of defendants and their families in case processing in the New Jersey juvenile jurisdiction continues in sentencing hearings as well as during the earlier stages of proceedings. Judges often ask parents what

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the treatment of male and female adolescent defendants is not a focus of my research, though I return briefly to this topic in the conclusion (chapter seven) and suggest avenues for further inquiry.

sentences they think will help their children. Additionally, when considering non-custodial sentences judges ask parents whether they will accept the defendant back into their home and support the defendant's compliance with court orders. Thus I find no variation in this jurisdiction as a function of stage of case processing for any of these three characteristics of formality I describe above.

Formality in the New Jersey Juvenile Jurisdiction: Juvenile Justice

Overall I find that the New Jersey juvenile jurisdiction resembles a juvenile justice model along this one dimension, formality of case processing. As predicted by prior research and political rhetoric, case processing is informal throughout both stages of proceedings. Courtroom workgroups include many external sponsoring agencies, the style of interaction is informal, and defendants and their parents are intimately involved in hearings. This is true both prior to sentencing, and during the sentencing phase, as well as for both courts within this jurisdiction. In the following sections, I consider the same features of formality of case processing in the New York criminal jurisdiction to compare this dimension of the model of justice reflected in each jurisdiction type.

New York Criminal Jurisdiction

Prior to Sentencing

1. Composition of Courtroom Workgroup

Unlike the New Jersey juvenile jurisdiction during the early stage of case processing, prior to the sentencing phase in the New York criminal jurisdiction the courtroom workgroup is limited to three legal actors: the judge, defense attorney and prosecutor. No other court professionals or sponsoring agencies, such as social workers or counseling professionals, participate in this early phase. The only exceptions are when police officers or other witnesses testify under oath about the actual offense, or the involvement of the department of probation in establishing a defendant's guilt for a violation of probation. Instead of expanding the workgroup to include treatment professionals, the probation department, defendants, or any other external sponsoring agencies, the workgroup is limited to the the defense attorney, prosecutor and judge discussing the legal sufficiency of conviction.

2. Formality of Courtroom Interaction

In contrast to the New Jersey juvenile jurisdiction, in which interaction is informal prior to sentencing, the style of interaction during the early stage of case processing in the New York criminal jurisdiction is very formal. As prior research and political rhetoric predicts, courtroom interaction in the criminal jurisdiction prior to sentencing is entirely focused on an adversarial debate between prosecution and the defense. This debate focuses solely on the evidence against the defendant. Hearings follow a typical pattern whereby the defense attorney submits written legal motions concerning evidentiary and policing issues: whether the defendant is properly arrested,

whether a witness identification lineup is properly conducted, or whether the evidence collected by the police is legally collected. The prosecutor takes an adversarial stance and argues against the defense attorney's motions, and the judge mediates between them by ruling on either side.

During these debates the prosecutor and defense attorney each estimate the strength of the other side's case and decide how to proceed. For the defense attorney this information informs her recommendation to the defendant of whether to plead guilty, and if so, for how severe a sentence the attorney can negotiate. For the prosecution this information determines whether to offer a more enticing plea bargain or, occasionally, if the case should be dismissed. The judge mediates the negotiations by prodding each for information, ruling on disagreements and motions, and suggesting resolutions to disagreements. Consider the following statement by a defense attorney concerning the adversarial stance between prosecution and defense and the lack of cooperative communication:

> A judge will listen, particularly a judge in a part like that [the youth part]. I think he's there to listen. But sometimes these [Assistant District Attorneys] they don't want to hear anything about what you've got to say. (#1)

Thus, prior to sentencing, interaction in both New York criminal jurisdiction courts is adversarial, with a goal of determining guilt or innocence. Hearings follow a typical pattern whereby the prosecutor presents evidence to strengthen the State's case against the defendant, the defense attorney challenges the prosecutor's case by

pointing out weaknesses in the quality of the evidence, and the judge ensures that statutes regarding evidence and case processing are properly followed and defendants' rights are respected.

3. Roles of Defendants and Their Families

In contrast to the New Jersey juvenile jurisdiction, in which defendants and their families participate in case processing, defendants and their families do not participate in the initial phases of case processing in the New York criminal jurisdiction. Until guilt is established and sentencing discussions begin, proceedings in the criminal jurisdiction include participation by legal professionals only.

During the early stages of New York criminal jurisdiction hearings, defendants' families have no direct involvement in court cases – not unless they are needed as witnesses or to establish the age of the defendant. An attorney may refer to a defendant's family as capable of caring for the defendant and helping her show up for court appearances, but families have no direct participatory role. Other than their initial plea of guilty or not guilty, criminal jurisdiction defendants themselves do not speak until either the allocution of a plea bargain or the beginning of a trial. In fact, regardless of whether or not defendants are in handcuffs (about half are), almost without exception each criminal jurisdiction defendant stands silently with her hands behind her back. If a defendant wants to add something (which itself is rare), she whispers it to her attorney. If a defendant tries to address the judge directly, the judge

stops her and tells her instead to talk to her attorney, who then relays any information to the court.

Hence, during the early stage of case processing, the New York criminal jurisdiction clearly reflects a criminal justice model. The courtroom workgroup consists of only the judge, prosecutor and defense attorney, all interaction is very formal and adversarial, and neither defendants nor their families participate in hearings.

Sentencing Stage

1. Composition of Courtroom Workgroup

Recall that prior to the sentencing phase in the New York criminal jurisdiction the courtroom workgroup is limited to three legal actors: the judge, defense attorney and prosecutor. Yet during the sentencing phase of criminal jurisdiction case processing, the courtroom workgroup expands to include participation of external sponsoring agents. Often, the judges or defense attorneys request the involvement of representatives from treatment program agencies during the sentencing phase. These individuals represent agencies that offer a wide variety of services, such as: mental health assessment, emotional counseling, drug treatment, employment counseling, or anger management therapy. There are a number of privately operated agencies in New York City that offer these services, and the criminal jurisdiction judges both incorporate them into the courtroom workgroups during sentencing. The participation

of these external agents in hearings consists of submitting a written memo, detailing the defendant's compliance with the program's rules and the defendant's emotional or behavioral progress, and participating in discussions about the defendant. The memos they submit also present investigations of a defendant's court history, school background, family and home life information, and offer diagnostic reports and a recommendation to the court. The program agency representative fully participates – along with the defense attorney, prosecutor and judge – in all court hearings during the sentencing phase. Thus, during the sentencing phase (and only during the sentencing phase), the New York criminal jurisdiction courtroom workgroups are similar to the New Jersey juvenile jurisdiction workgroups in that they reflect juvenile justice by including both treatment and legal professionals.

Relative to one another, only one difference arises between Brady and Brown County criminal jurisdiction courts with regard to external sponsoring agencies' participation in court sentencing hearings. In Brown, the judge incorporates representatives from several different treatment program agencies. In fact, on several occasions the judge told me that his biggest wish for his court is to have a central directory that lists all possible treatment programs and would allow him to choose from among several options. To help further his objective of incorporating a wide range of programs, he hosts quarterly meetings with representatives from probation, the District Attorney's office, and all program agencies he can recruit to attend the meetings. In contrast, the Brady County judge relies primarily on the department of

probation to supervise defendants, attend court and submit reports about the defendants. Other program agencies do assume cases in this court, but the majority is handled by probation. Despite the more narrow range of external sponsoring agencies, the Brady County judge uses probation representatives for the same function for which the judge in Brown County uses other agencies – to supervise the defendant, offer treatment and counseling services, and report on the defendant's behavior and compliance with court orders.

Thus, during the sentencing phase, the New York criminal jurisdiction courtroom workgroup expands and begins to resemble juvenile justice more than criminal justice. Although the courtroom workgroups of the New Jersey juvenile jurisdiction and the New York criminal jurisdiction are very similar with respect to including external sponsoring agents during the sentencing phase, there is an important distinction between them during this phase. Relative to the close-knit community of the New Jersey juvenile jurisdiction workgroups, the external sponsoring agents who participate in New York criminal jurisdiction sentencing hearings are "outsiders" who visit the court community. Because the criminal jurisdiction courtrooms are larger and more crowded, external sponsoring agents are unable to interact with court staff as easily as those in the New Jersey juvenile jurisdiction. Rather than chatting with all court actors upon arrival as in the juvenile jurisdiction, a criminal jurisdiction external participant will arrive in court, silently find a seat in the audience, come forward when her case is called, and leave afterward.

As a result, relative to the interaction in the New Jersey juvenile jurisdiction the external participants in the New York criminal jurisdiction are more purposeful – they come for the cases in which they are participating and they leave directly afterward. In addition, their participation usually consists primarily of the introduction of written reports into the court record, rather than the casual verbal participation among "regulars" that occurs in the juvenile jurisdiction.

Furthermore, in contrast to the juvenile jurisdiction in which external sponsoring agents share the court's dual mission of helping and punishing youth, most external sponsoring agents in the criminal jurisdiction are dedicated to treatment rather than to punishment.[24] Social workers and treatment clinicians staff these agencies, therefore they have little incentive to report negative behavior or to pursue social control objectives, in contrast to the "regulars" in the New Jersey juvenile jurisdiction. Treating adolescents as opposed to punishing them resonates with the criminal jurisdiction external sponsoring agents' professional orientations as social workers. Hence they are not as well integrated into courtroom workgroups as their counterparts in the juvenile jurisdiction, though they do participate fully in hearings during the sentencing stage. These criminal jurisdiction treatment programs are privately run but are funded by the state based on their enrollment, thus they often compete with one

[24] Of course, "treatment" programs – even rehabilitative ones – are considered by some writers to be subtle versions of social control (Donzelot 1979; Foucault 1977; Platt 1977). The distinction I suggest here is between rehabilitative treatment directed at reforming a defendant's behavior through education and counseling, and a more coercive regime that focuses on supervision and threats of punishment.

another to recruit defendants. Consider the following statement by a criminal jurisdiction prosecutor concerning the disincentive of private treatment programs to report program violations:

> We have found over time that most of the programs, and I don't know if it's because they rely on a number of kids to be in the program for them to keep their funding, I don't know what the reason is but [they] never [report a violation of court orders for] anyone… (#3)

In addition, because they might be interpreted as statements by professionals rather than opinions of colleagues, the reports to the criminal jurisdiction courts from external program providers are more explicit and might weigh more heavily than reports given by court "regulars".

2. Formality of Courtroom Interaction

In contrast to the formal style of interaction prior to sentencing in the New York criminal jurisdiction, an informal style of interaction emerges during the sentencing stage. Once consideration of sentencing begins, the criminal jurisdiction interaction takes on a more cooperative tone. According to a defense attorney:

> We've had cases where it was incredibly adversarial up until we were able to provide a psychiatric report and then it becomes collaborative. Sometimes I think often the relationship changes as the case progresses. They almost always start adversarial because the prosecutor has a victim and we have a client and until we can humanize our client….(#6)

When describing the sentencing process, one youth part judge stated:

> …You certainly like to develop an atmosphere in your courtroom, which I think I do, that this is a serious matter and you get people on board and try to use your influence to get them to work together and we do. (#16)

The distinctly noticeable adversarial, competitive nature of the courtroom workgroup abruptly changes once court actors begin to discuss sentencing. At this point, court actors cooperate with one another to a greater extent than before and collectively fashion appropriate sentences for defendants. Of course, the prosecutor typically lobbies for a harsher sanction than requested by the defense attorney. However, the distance between their views is smaller and their differences more nuanced than when debating the dichotomous outcome of guilt versus innocence during the earlier phase.

The language used in New York criminal jurisdiction sentencing hearings is far less formal than the ceremonial language of hearings during the early stage of case processing. The judges comment frequently on the defendant's character and openly make character judgments (see Emerson 1969) – this occurs in most cases with which the judge thinks the defendant has not complied with his previous court orders. For example, during one hearing I observed a probation officer inform a judge that a defendant awaiting sentencing is a suspected gang member. The judge responded by telling the defendant that most gang members 'wind up dead or sent up for a long time', and continues by saying 'you're stupid if you want to be in a gang.' In another hearing the judge told a defendant 'one to three years in prison is a lot for a fourteen year old, isn't it? From my vantage point you're on a fast-track to hell. You're

throwing your life away…' This type of judgmental discourse is a sharp contrast to the formal nature of hearings prior to sentencing, in which guilt or innocence is discussed strictly in legal terms.

3. Roles of Defendants and Their Families

During the sentencing phase in the New York criminal jurisdiction, there is a significant shift from the absence of defendants' participation during the early stages of case processing. Once guilt has been established in the criminal jurisdiction and the court begins to consider sentencing, defendants (though still no parents) participate in court proceedings. This may take either of two forms. One, the judge may ask the defendant direct questions in order to evaluate subjective characteristics such as the defendant's willingness to participate in a treatment program or her level of remorse. Two, the judge may have a direct exchange with the defendant in an attempt to communicate to her the wrongfulness of her acts.

Often, the judge admonishes defendants during sentencing. Consider the following transcript of a hearing in which a JO defendant pleads guilty to a robbery charge by recounting how he and a co-defendant stole a woman's handbag while displaying a handgun. This passage vividly displays the informal interaction between judge and defendant during sentencing; this style of interaction is in stark contrast to the formalistic legal language and lack of interaction between judge and defendant

prior to the sentencing stage. After asking the defendant several questions about the incident, the judge continues:

> Judge: "Did your mom ever have somebody stick a gun to her head?"
> Defendant: "No your honor."
> Judge: "How would you feel if somebody did that to your mother, took her paycheck, she can't buy food or pay the rent?"
> Defendant: "I'd be angry."
> Judge: "Why?"
> Defendant: "Because."
> Judge: "What if it was somebody that needed money to get on the bus really bad?"
> Defendant: "It doesn't justify to do what we did."
> Judge: "I don't understand. Why not?"
> Defendant: "We wasn't thinking when we did it."
> Judge: "How much thinking you got to do to stick a loaded automatic twenty-five caliber gun in somebody's head to get carfare? How much thinking does it take? This lady is forty-three years old. She is no different than your mother, probably the same age as your grandmother a few years ago. Just people minding their own business. Now, when you look at your mother now and see how she must feel knowing that her son participated in a gunpoint robbery, can you see the shame you brought on her? So how do I know you are not going to do this again?"
> Defendant: "Because I learned my lesson."
> …
> Judge: "Tell you what I am going to do, Mr. [ ], you are getting this break, but I promise you that if you slip up on this case, I guarantee you I will sentence you to the maximum that I can. And you're very young to be doing three and a third to ten years, but that's exactly what I'll do. So if you really learned your lesson, learning that lesson is going to include one hundred percent compliance with the terms of this agreement. You are not going to cut school. You are not going to be using any drugs. I am going to have you tested to see that you're drug-free. There will be curfew in place every day of the week. Your life is going to change quite a bit from this day forward so that you can walk freely out this door. If you slip up, I am going to send you away for the

> maximum. Okay? If you don't slip up, you may get out of this without being a felon."

In this dialogue, the judge shames the defendant by personalizing the offense and asking how the defendant would feel if this act had been done to his mother. Furthermore, he points out to the defendant that his mother feels shame because of his criminal actions. The judge also threatens the defendant with a severe sentence of several years in prison in case the defendant does not comply with the requirements and restrictions ordered by the judge. The judge's comments are personalized and emotive, they are delivered in a hostile tone, and they imply that the offense was a foolish act and the defendant a fool for committing it.

This admonishment is marked by the judge stepping out of his official judicial character and engaging the defendant in language that resembles street talk more than legal jargon. It is clearly an attempt to communicate to the defendant in language that the defendant can understand – in a sense, the judge "disses" the defendant. The admonishment is very noticeable because the judge's tone and mode of interacting with the defendant are vastly different than both the formal language and the lack of interaction between judge and defendant prior to the defendant's admissions of guilt.

In sum, during the sentencing phase, the formality of case processing in the New York criminal jurisdiction differs from that of earlier hearings. During the sentencing phase, case processing reflects a juvenile justice model with regard to

formality. The courtroom workgroup expands to include treatment professionals, interaction becomes more cooperative, and defendants actively participate in hearings.

Formality in the New York Criminal Jurisdiction: Sequential Justice

Overall I find that the formality of the New York criminal jurisdiction depends on the stage of case processing. During the early stage, prior to sentencing consideration, it resembles a criminal justice model along this one dimension, formality of case processing. As predicted by prior research and political rhetoric, courtroom workgroups prior to sentencing include only legal professionals, interaction is very formal and adversarial, and neither defendants nor their parents participate in hearings. Yet during the sentencing phase, the New York criminal jurisdiction resembles a criminal justice model. The courtroom workgroups expand to include external sponsoring agencies, interaction becomes less formal and more cooperative, and defendants participate in hearings. This bifurcation of case processing allows the New York criminal jurisdiction to produce a hybrid form of justice by using a sequential model of justice – a criminal model early on, then a juvenile model during the later stage of case processing – regarding the degree of formality.[25]

[25] This finding of sequential justice raises the question of whether all case processing in the criminal jurisdiction – including cases of adults as well as adolescents – is formal during early stages and informal during the sentencing stage. In this dissertation I focus only on adolescent cases, thus I do not address this question here. However, I do return to it briefly in the conclusion (chapter seven) by considering the implications of my results and how they should be extended by future research.

Conclusion

My findings suggest that criminal jurisdictions prior to sentencing are formal, adversarial environments that exclude external sponsoring agents, fully rely on adversarial proceedings, and prohibit any participatory role of defendants or their families. However, during sentencing, these formal procedures abruptly end and a less formal procedural mode begins. At this stage, external sponsoring agents participate in proceedings, courtroom interaction becomes more cooperative, and defendants – though not their families – become involved in court hearings. In the juvenile jurisdiction, however, case processing is relatively informal throughout both stages of case processing.

Hence, I find that with regard to formality of case processing the data support the hypothesized distinction between criminal justice in the criminal jurisdiction and juvenile justice in the juvenile jurisdiction prior to sentencing, but not during the sentencing stage. Rather, I find that though the juvenile jurisdiction produces a juvenile justice model throughout both stages, the criminal jurisdiction shifts at the sentencing stage from a criminal justice model to a style more in keeping with the juvenile justice model.

CHAPTER 5: EVALUATION

In this chapter I proceed with my analysis by testing whether the evaluation of adolescents in the New Jersey juvenile jurisdiction and the New York criminal jurisdiction conforms to the distinction suggested by juvenile and criminal models of justice. For this comparison and analysis I continue to rely on my interviews with courtroom actors and observations of proceedings of the prosecution of adolescents in the New York criminal jurisdiction and the New Jersey juvenile jurisdiction.

I answer one central question in this chapter: does jurisdiction affect the evaluation of adolescent offenders? If I find that relative to the New Jersey juvenile jurisdiction, (1) the evaluation of adolescents in the New York criminal jurisdiction is more focused on offenses rather than offenders, and (2) New York criminal jurisdiction decision-makers conceive of adolescent defendants as fully culpable for their actions, then I can conclude that (with regard to evaluating adolescents) juvenile justice is practiced in juvenile jurisdictions and criminal justice in criminal jurisdictions. If, however, I find either no difference across jurisdictions, or a relatively greater focus on offenses than on offenders in the juvenile jurisdiction, then my data fail to support the distinction in justice suggested by the juvenile and criminal models of justice.

As I describe in the previous chapter, I focus here on comparing the processing of adolescents in criminal and juvenile jurisdictions rather than comparing courts

within the New York criminal jurisdiction and within the New Jersey juvenile jurisdiction. I restrict the analysis to this jurisdictional comparison because I find that within both jurisdictions, the different courts are nearly identical regarding the evaluation of adolescents.

To analyze differences in evaluating adolescents across jurisdictions, I consider three features of court evaluation that prior research suggests are important: criteria discussed in evaluating adolescents; typifications of offenders, offenses and punishments; and perceptions of criminal culpability of adolescents. I present data to highlight how these characteristics vary by stage of case processing – prior to sentencing and during the sentencing stage – separately within the New Jersey juvenile jurisdiction and the New York criminal jurisdiction. Additionally, while presenting the data, I consider how the evaluation of adolescents varies by professional role (prosecutor, defense attorney and judge) in each stage and for each jurisdiction type. Before I analyze the evaluative criteria in these courts, I first review the literature regarding the evaluation of adolescents in criminal and juvenile jurisdictions.

Prior Research on Evaluation

Prior research suggests that relative to one another, criminal jurisdictions use offense-oriented evaluative criteria and juvenile jurisdictions use offender-oriented evaluative criteria to prosecute and punish adolescents (see Howell 1996; Mears and

Field 2000; Zimring 1998, 2000). Of course, juvenile jurisdictions still consider offenses, but they do so in ways that take individual offenders and their future welfare into account in addition to the protection of the community. Though no prior research directly tests this claim, policy-makers who advocate juvenile transfer policies explicitly endorse the goal of using an offense-based punishment system for adolescents in the criminal jurisdiction (eg. DiFrancesco 1980; National District Attorneys Association 2000).

Corresponding to this distinction between offender-oriented and offense-oriented evaluative criteria for prosecution and sentencing of adolescents, prior research leads one to expect a difference among typifications of offenses and offenders in each jurisdiction. As prior research clearly shows in both juvenile and criminal jurisdictions, courtroom workgroup members develop common typifications of offenses, offenders, and "going rates" of punishment (Albonetti 1991; Cicourel 1968; Emerson 1969; Heumann 1978; Sudnow 1965). These typifications mirror workgroup norms and focal concerns, and allow courtroom workgroup members to reach mutual understandings and dispose of cases efficiently. Given the difference between the offense-based criminal justice evaluative criteria and offender-based juvenile justice evaluative criteria, one might expect distinctions between shared typifications that mirror this distinction. Specifically, the prior research would lead one to expect that for the prosecution and sentencing of adolescents, typifications of offenses would be paramount in the criminal jurisdiction, but not the juvenile

jurisdiction; conversely, one would expect that typifications of offenders would be paramount evaluative criteria in the juvenile jurisdiction but not the criminal jurisdiction.

Furthermore, the notion of prosecuting and punishing youth in the criminal jurisdiction presumes that adolescents who commit serious offenses are fully culpable for their crimes, despite their youthfulness. This notion, articulated with the popular catchphrase, "you do the crime, you do the time," suggests that the potential immaturity and developmental deficiencies of adolescents (relative to adults) are discounted when adolescents are prosecuted in the criminal jurisdiction (eg. National District Attorneys Association 2000). Such a discount of adolescents' youthfulness is antithetical to the notion of *parens patriae* that guided the creation of the juvenile justice system (Feld 1999; Platt 1977; see also Donzelot's (1979) description of the *tutelary complex*). As a result, one would expect to find that culpability for one's offenses is weighed more heavily in a criminal jurisdiction than a juvenile jurisdiction, and that adolescents' youthfulness and immaturity would be weighed more heavily in a juvenile jurisdiction than a criminal jurisdiction. Finding such a difference in my analysis would support the hypothesized distinction between criminal and juvenile models of justice.

Finally, prior research suggests that distinctions among evaluative criteria might correspond to the distinct professional roles within each court community. Scholars who study the professional socialization of court actors in both juvenile and

criminal jurisdictions repeatedly conclude that the goals and interests of court actors' professional roles shape their methods and criteria for evaluating defendants (Eisenstein et al. 1988; Emerson 1969; Heumann 1978). Thus, because prosecutors' immediate professional objectives (secure convictions, protect the community) are very different from those of defense attorneys (obtain dismissals, protect clients' rights), these two types of court actors should be socialized into holding different conceptualizations of the evaluative process. This framework suggests that prosecutors prioritize the harm inflicted by a defendant, while a defense attorney might conceive of a defendant's social history as the most important evaluative criterion, irrespective of jurisdiction type.

New Jersey Juvenile Jurisdiction

Prior to Sentencing

1. Evaluative Criteria

Adding further support to the application of juvenile justice in the New Jersey juvenile jurisdiction, I find that during the early stage of case processing the content of courtroom interaction is focused on individual offenders, rather than solely on offenses. In the New Jersey juvenile jurisdiction, courtroom interaction focuses on defendants' personal lives early and often during court proceedings. Consider the following courtroom interaction, which is typical of many juvenile jurisdiction

hearings. The hearing begins with the judge establishing the defendant's address, date of birth, and charges pending against him, and continues as follows:

> Prosecutor: 'Your honor, the state requests remand because of the seriousness of the case.'
> Defense attorney: 'Your honor I ask for his release. Unlike the other co-defendant he has no prior contact with the [juvenile court] system. His parents are here and would like to take him home. There was a gun displayed in this offense, but it wasn't pointed at anyone. And there were adults involved. Maybe he can be given in-home detention?'
> Judge: 'I don't think he's even in school is he?'
> Defendant's father: 'If he isn't, we'll make him go.
> Judge: 'I can't release him. … Part of the problem is that he's not in school, he's got all this time on his hands, and he's running around at 11:00 at night. He's involved in what everyone agrees is a very serious offense. I can't release him unless there's some structured program in place. He's not obeying his parents, am I right?'
> Father nods yes.
> Judge: 'I can't release him, not with him not listening to his parents. And of course he's innocent until proven guilty, but I can't let him go. …Does he have a drug or alcohol problem?'
> The parents both say no.
> Judge: 'Do you use drugs?'
> Defendant: 'No, I just smoke some [marijuana] blunts.'
> Judge: 'So that I have it for next time, what was the school situation?'
> Defendant's mother: 'Sometimes I send him and he doesn't participate.'
> Defendant's father: 'Bottom line is he doesn't want to go. We're trying to get him into the job corps. He's got an appointment for an interview.'
> Judge: 'Good, keep trying and tell me what happens next time in court. Because something's got to happen.'

This hearing demonstrates how the defendant's behavior at home, including his drug use, and his behavior at school are paramount topics of discussion even in early stages

of a case. The only discussion during this hearing of the actual offense or the evidence against the defendant comes during the defense attorney's early request to have the defendant released from detention. Following that, the judge asks about the defendant's family and discusses matters not relevant to the offense at hand.

In initial hearings New Jersey juvenile jurisdiction courtroom workgroup members discuss a broad range of topics rather than only debating evidentiary and legal factors that determine legal sufficiency for conviction. Judges, prosecutors and defense attorneys discuss offense severity and circumstances surrounding the offense (eg. number of co-offenders, prior arrests, level of injury of the victim) in addition to the defendant's family, home life, education, drug use, employment, and perceived attitude.

In the New Jersey juvenile jurisdiction, one common method for introducing offender-oriented factors into the court record is through the participation in all hearings of defendants and their families. Judges routinely ask defendants' parents about the defendants' behavior and obedience at home, their peers, and their school attendance and performance. Parents' and defendants' participation introduces peripheral issues that would be considered irrelevant in a criminal jurisdiction prior to the sentencing phase. These issues provide the courtroom workgroup with personal, extra-legal information about defendants, and arm the court with greater knowledge of the defendant and her personality beyond legal issues related to the alleged offense.

The opportunity – and often the necessity (by demand of the judge) – for parents to report on their children causes parents and defendants to "hang themselves" (Holstein 1988), or to make statements that the prosecution uses to demonstrate negative character traits (see Matza 1964). It allows frustrated parents an audience for whom they can complain about their disobedient children. The parents, too, are under court orders to appear before the judge or risk a warrant for their arrest. Undoubtedly some parents feel stigmatized by this and react defensively by portraying themselves as good parents, and their children as disobedient. This search for validation as parents can lead to the detention of their children, or even a more severe disposition. Consider the following excerpt from a Pierce County hearing:

> Judge: 'How's his behavior at home?'
> Mother: 'Bad. I've been trying to get help for over a year. He doesn't listen to me. I've had to pay off two drug dealers that he owes money to. He cusses me out and gives me a lot of problems. I need help.'
> Judge: 'I'll give you help.'
> Judge then starts to order the defendant to be detained.
> Mother: 'I don't want him locked up, I want help.'
> Judge: 'I'm trying to help. You can't control him. I can have him evaluated in the youth house.'
> Mother: 'I don't want him locked up.'
> Judge: 'Do you want to take him home?'
> Mother: 'I don't want him locked up. I want him on a campus where he can go to school and get an education and get some help. Can you put him on house arrest? I want help.'
> Mother starts crying.
> Judge: 'Can you deal with him at home?'
> Mother: 'Yes, I can deal with him.'
> (The mother is still crying.)
> Judge (to defendant): 'Look at your mother. You caused this.'
> Defendant: 'I didn't cause nothing.'

Judge: ‘Send him to the youth house.”

In this hearing, the judge detains the youth as a result of the mother’s plea for help, and despite her repeated plea to not “lock up” her son.

In contrast, some parents request that the judge detain their children. For example, in the following excerpt of a Pierce County hearing a mother and her boyfriend requested that the defendant be detained:

> Judge: ‘Who is this?’
> Mother: ‘My boyfriend’
> Judge: ‘Does he live with you?’
> Mother: ‘Yes’
> Judge: ‘For how long?’
> Mother: ‘About one month’
> Judge: ‘How do you get along with him?’
> Boyfriend: ‘We get along well. I try to be a role model for him, especially because his father ran out. He was doing better with me for awhile.’
> Judge: ‘What do you think should be done with him?’
> Boyfriend: ‘I think he should be off the streets. He’s uncontrollable and won’t listen to me or to his mother.’
> Judge: ‘So then what should be done?’
> Boyfriend: ‘I guess you could put him in a program, or in jail for a little bit.’
> Judge: ‘Should we keep him locked up until the thirtieth and see if his attitude changes? This is for you too, Ms. [xx].’
> Mother: ‘Yes’
> Boyfriend: ‘I think that’s good, but what if he violates probation again?’
> Judge: ‘If he violates again, then he’ll get picked up and come back to court. If he still violates we’ll lock him up. How long has he been in?’
> Mother: ‘two weeks’
> Judge: ‘Well then it’ll be a month. Maybe his attitude will change.’
> Mother: ‘He has a lot of bad influences around him.’

> Judge: 'I know that. That's what I'm doing – I'm trying to keep him away from them. We'll keep him locked up until the thirtieth, but you should visit him.'

Moreover, a judge's interpretation of parents' behaviors can have a significant effect on the judge's decision-making:

> …You also have the opportunity here to talk to and observe their parents during the course of the proceedings which is an equally powerful tool in predicting whether or not they are going to be appropriate candidate for probation and maybe decide what conditions you need to impose. You might be parents who are….for example today we had one that was a clear enabler versus somebody who is realistic and understands that in order to help. It's a case-by-case determination based on your life experience, eventually. (#9)

Thus in several ways the involvement of parents in New Jersey juvenile jurisdiction court hearings can either hinder or help the defendant's chances of release, either pretrial or through a non-custodial sentence.

In addition to a disadvantage from parental involvement, adolescents have the opportunity to display bravado or defiance to authority, in response to which the judge usually detains or incarcerates the defendant. Even when neither defendants nor parents act out in court, frequently they give responses that are interpreted by judges as slow-witted or unremorseful. Of course these mannerisms may simply be a result to their lack of understanding what is going on or fear of punishment they may face. According to judges, defendants' bad attitudes can influence a decision of whether to detain a defendant pretrial:

> A lot of decisions, the kids were mouthing off all the time and they are defiant and they show that attitude as soon as they walk in the court, that's a kid you're going to have to deal with. He is going to be defiant no matter what you do. Actually, with the females. They have an attitude about them, that most of those kids have already been on the streets for a long time and parents don't control them at all and by the time we get them it's almost too late. If they've already learned to live on their own at the age of fifteen or sixteen years old, placement in an institution and they run away from it. But a kid's attitude has a lot to do with whether I keep them in custody or not. It has nothing to do with what I do with them at trial, because you don't consider that. Whether he stays in custody, that's a big factor, his attitude and his way of speech and the way he conducts himself. The way he deals with the parent standing next to him. (#7)

Despite these substantial risks, the involvement of defendants and their families may have positive consequences for the defendants as well. Their involvement may "humanize" them by portraying them as children in need of the state's help, as normally well-behaved adolescents who followed delinquent peers into criminal activity, or as "good kids" whose criminal acts are isolated incidents. The parents may react constructively to the pressure the court places on them by offering positive reports of their children and requesting that their children be returned home. A parent who asks for her child's release from custody and can promise close supervision at home is more likely to secure her child's release than a parent who fails to lobby in this way. In addition, although parents' involvement carries risks, these risks often are mediated by the attorney, who can present the information in a way that might benefit the defendant.

2. Typifications of Offenses and Offenders

As scholars like Sudnow (1965) and Emerson (1969) demonstrate, court actors develop typifications of offenders and offenses that help them make decisions in court. By coming to see categories of defendants as "normal offenders," or categories of offenses as "normal offenses," they remove uncertainty from their decision-making and rely on patterned, shared understandings of cases.

a. Offenses

The manner in which court actors rely on typifications of offenses relies in large part on the range, volume and nature of cases in each court. The New Jersey juvenile jurisdiction courts each have very high volumes of cases. According to supplementary data provided on request by the New Jersey Administrative Office of Courts, the Pierce County juvenile court disposed of 6,566 new juvenile delinquency cases in fiscal year 2002, and the Walker County court disposed of 2,447 cases. These are distributed to four judges (only three of whom work full-time) in Pierce and two judges in Walker. And, the caseloads of these courts are very diverse. Adolescents of any age under eighteen appear here, and all offenses are represented. Some case screening does occur – an intake officer diverts some less serious cases to a separate agency prior to any court appearance, and prosecutors screen cases for legal

sufficiency as well. However, the range of cases heard in these courts is large – much larger than in the New York youth parts (see below).

Though there is a large range of the types of cases heard in the juvenile jurisdiction, court actors utilize three general typifications of offenses: drug offenses, car thefts, and violence. According to the court actors in each New Jersey juvenile court, the cities in which the courts are located each have a flourishing drug trade. These drug businesses often employ poor inner-city youth as drug sellers, who subsequently comprise a significant proportion of each court's caseload:

> In the State of New Jersey we have mandatory drug laws for adults. If you get arrested and you are charged with possession with intent to distribute drugs within a thousand feet of a school, you have to spend mandatory time in state prison. Now in [the central city of Pierce County], there are only one or two places in the entire City of [ ] you can go where you're not within a thousand feet of a school. So if you are over eighteen you do time. Juveniles, it doesn't apply. So what happens is the adults go out, they fund them and they send the juveniles out. You've heard me say this in court. That they think nothing is going to happen. And it does happen. And you've also seen me in court ask them, 'Do you use drugs?' 'No.' They are out there trafficking. It's a very difficult problem. (#9 - judge)

As his statement makes clear, this judge sees a frequent pattern of juveniles being used by drug dealers because these dealers know that the juveniles will receive less severe sanctions than other potential street-level drug sellers. In court this judge asks each adolescent charged with selling drugs if she has a drug problem – when she denies a

drug problem the judge then chastises her for being "caught up" in the drug business, and tells her older drug dealers are using her as a pawn.

Auto theft is the second type of normal offense in the New Jersey juvenile jurisdiction. Northeastern New Jersey has a reputation as a hotbed of auto theft activity, and the juvenile jurisdiction courtroom workgroup members take this offense seriously. When sentencing auto thieves, one of the New Jersey juvenile jurisdiction judges routinely adds a statement he does not make for other offenders: "This is an offense to everyone in [city name], not just the owner of the car. This is the type of thing that makes people not want to come to [city] or work here." These offenders also comprise a significant proportion of the court's caseload. According to one of the public defenders:

> It doesn't take long to evaluate a case. Most of our police reports are two to three pages. You can tell right off the bat if you have a good case or a bad case. Many of them deal with cars and many deal with drugs. Those are primarily the two kinds of cases we handle. (#12)

Violent offenses comprise the third broad category of offense in the New Jersey juvenile jurisdiction. These cases stand out for their severity in contrast to the other two broad categories of offenses. Auto thefts and drug offenses are considered "normal" offenses; violent offenses are somewhat typical as well, because there are several of them before the court at any one time, yet because they pose a risk to human life they are considered more serious cases than the "normal" auto and drug offenses.

Thus these cases receive somewhat greater attention and a more individualized consideration by New Jersey juvenile jurisdiction courtroom workgroups.

b. Offenders

In his study of the juvenile jurisdiction, Emerson finds that court actors evaluate defendants with regard to their attitudes and characters, perhaps even more so than factors related to their criminal offenses (1969). Certainly some character evaluation occurs in the New Jersey juvenile jurisdiction, but this appears to be far less important than the defendant's prior arrest record and current offense. When character evaluations do come into play, they usually benefit defendants. This is because the courtroom workgroup members stereotype most defendants by assuming they are poor, come from single-parent families (or foster homes or homes of other relatives like grandparents), and uneducated:

> I think that a lot of these kids don't have hope for themselves or their community for the future. They don't see how they figure in the grand scheme of things. I'm just speculating. They don't see how they can. I think that for some reason drugs seem to find their way disproportionately to these communities and that in turn promotes further criminal activity. Guns seem to find their way disproportionately to these communities and that promotes further criminal activity. (#14 - prosecutor)

> …The poorer the person, usually the less parental guidance they receive. A lot of our kids don't have a father. The mothers are on public assistance. And I think that's a contributing factor. The father is dead. You read a lot of predisposition [reports]. My mother's in jail, my father is in a drug rehab and I'm being raised by my grandmother. So what you see your parents do, you do. I don't think it's necessarily race. I think more economics. (#11 – defense attorney)

Of course there may be some truth to these attributions, especially since almost all defendants are represented by public defenders (and hence poor). Yet it is important that the court actors hold these conceptions, and assume most defendants fit this typification. Thus, when adolescents appear before the court with two parents and a positive demeanor, they are evaluated positively. Consider the following juvenile jurisdiction sentencing hearing:

> Defense attorney: 'This is his first arrest. He's never been in trouble before. He does well in school and is planning to graduate soon.'
> Judge: 'Have you had any problems with him?'
> Defendant's mother: 'Never before.'
> Defense Attorney: 'The fact that his whole family is here is a good sign. I'm convinced that this offense is aberrational. He says he wasn't participating, but he was with others who were.'
> Judge (to defendant): 'Do you know what aberrational means? Your attorney just said it about your offense. It means it was out of character. What do you want to do after you graduate?'
> Defendant: 'Go to college'
> They discuss where he might go, and where he has applied.
> Judge: 'This isn't a crime of violence, and he doesn't present a threat to himself, to the community, or to property. He comes from a good family. I think the fact that he's never been in trouble before by this age is commendable. I think he might be hurt by a prior record, so I'll give him a diversionary program. If he successfully completes the program, I'll dismiss the case.'

This transcript exemplifies two court dynamics. One, it demonstrates that having a positive attitude, a desire to continue with one's education and a supportive family are interpreted as positive indicators that the offense is aberrational. Two, it reveals the

judge's assumption that most similarly situated (poor African-American inner-city) youth are arrested during their adolescence. This is revealed when the judge states "I think the fact that he's never been in trouble before by this age is commendable," as if not being arrested deviates from a norm.

3. Attitudes about Culpability

The impetus behind the evaluation of adolescents in the initial juvenile justice system was the idea that juveniles are less culpable, or blameworthy, for offenses than adults (Feld 1999; Rothman 1980; Ryerson 1978). This idea, rooted in a *parens patriae* tradition, follows from the belief that serious crimes committed by young offenders may reflect developmental deficiencies in autonomy and social judgment, suggesting a reduction in their culpability. In this section I examine the attitudes about culpability that guide the evaluation of adolescents by New Jersey juvenile jurisdiction courtroom actors, and these actors' reliance on these attitudes prior to sentencing in each jurisdiction.

Overall, each of the New Jersey juvenile jurisdiction courtroom workgroup members I interviewed expressed a *parens patriae* notion that adolescents have less than an adult-level capacity to make decisions about whether or not to commit crimes, and should not be held responsible for their offenses in the same way or to the same extent as adults. Despite agreement on these basic premises, their conceptions of culpability vary with regard to how they express them and the components of

culpability. I measure these conceptions through two strategies: open-ended interview questions, and closed-ended questions with scaled responses. The scaled questions disaggregate cognitive development into individual capacities of decision-making.

Some distinctions between the New Jersey juvenile jurisdiction prosecutors, defense attorneys and judges are evident regarding conceptions of culpability. Despite these subtle differences, there are many similarities among conceptions of culpability expressed by the three types of court actors. Each of them believes that culpability is something that can be measured only individually, as it varies by individual juvenile rather than progressing in finite stages. And, they all agree that adolescents should receive reduced punishments and more rehabilitative services relative to how adult offenders are treated. According to one prosecutor:

> Prosecutor: We have a system that effectually values rehabilitation more than punishment. That means the system works to take all of those questions you just asked into consideration. When you say the ability to understand the complexity of what is going on, or work with their attorneys or something like that, that is why they have to have their parents or guardian present because nothing can be done outside of a parent's or guardian's presence for that reason. I feel like the system has all of those things worked into it. It already recognizes the problems and the questions that you are asking.
> Interviewer: Other than a parent or guardian present, how else does it take those things into consideration?
> Prosecutor: Like I said, the system already starts with the whole intake process - the review process. So every time they come into court or meet with the intake officer or do something with their parent's involvement right there and their attorney is present, they are taken by the hand with each step and told, 'This is what you have to do in order to not be in trouble again or not come back here again.' They are made fully aware of what they have to do. 'Don't

> get into trouble anymore. Don't get into fights at school. Don't get suspended. Don't mouth off to the teacher.' And, really, how much more can you say it with ABC language than the way it is? There is really no other way to do it any better. (#29)

This understanding is mirrored in the following statement by a judge. This statement exemplifies the child-saving mission of the initial juvenile justice system (see Platt 1977):

> I find myself doing the same things that judges that I appeared before did twenty to twenty-five years ago. You basically try to save the kid. As a public defender I tried to save the kid. But you also had to defend constitutionally, legal rights were protected. Here I'm more concerned about doing the right thing for the kid's best interest and trying to rehabilitate him and try to save the kid. (#7)

Thus, the New Jersey juvenile jurisdiction interview respondents in both courts share a basic conception of adolescents having a reduced capacity for decision-making relative to adults. During my interviews I asked each respondent a series of closed-ended questions concerning several capacities for decision-making, and asked each respondent to compare the capacity of the average fifteen-year-old to that of the average adult. All respondents in the juvenile jurisdiction indicate that adolescents are very different than adults with regard to all capacities for decision-making included in the closed-ended questions as well.

Hence the New Jersey juvenile jurisdiction interview respondents in both courts share a basic conception of adolescents having a reduced capacity for decision-

making relative to adults. Yet when considering the requirements for being held accountable for one's actions, these three types of court actors express different views. A clear trend is apparent, whereby defense attorneys operationalize level of culpability according to the adolescent's understanding of the consequences of their criminal behavior, and prosecutors consider responsibility in terms of offense severity.

When asked whether or not adolescents have an adult-level, or mature, capacity to make decisions about whether or not to commit crimes, most of the New Jersey juvenile jurisdiction defense attorneys say "no." They indicate that adolescents are very different than adults with regard to all capacities for decision-making included in the closed-ended questions as well; the average response, on a scale of one to four (with one meaning that adolescents are very different than adults, and four meaning they are similar) from these defense attorneys is 1.9. The following response is typical of their expressed beliefs on the reduced maturity of adolescents:

> Kids do things because they're stupid and they are stupid because they are uneducated. They are not stupid because they lack intelligence. … [They] lack the ability, like you said earlier, to make judgments, to think abstractly, to realize what tomorrow will bring and also I do think many of them are unable to walk in the shoes of another. I just don't think they realize the permanence of their actions, including killing somebody. (#8)

Defense attorneys cite the reduced ability of adolescents to make sound decisions about committing crimes as a primary reason why adolescents should not be punished as adults. Rather, they should receive more rehabilitative services than

offered to adults, and offered second chances rather than held fully accountable. These attorneys consider adolescence to be somewhat of a "training period", during which they should be offered opportunities to make mistakes without paying serious consequences for them (Zimring 1981), though with punishment to communicate wrongfulness and teach proper behavior. A typical response from a defense attorney is as follows:

> Interviewer: What are the components of being responsible and being held accountable by the criminal justice system?
> Defense Attorney: It is ability to comprehend what you did. And understanding the outcome. A lot of times that really will turn on a medical, psychiatric evaluation. (#11)

The responses of prosecutors to questions of maturity and culpability are somewhat more complex than those of defense attorneys. When asked outright, several of the prosecutors state that adolescents do have a mature capacity to make decisions about whether or not to commit crimes. However, when I asked these prosecutors about each individual capacity for decision-making, their responses contradict their earlier answers by demonstrating the underlying belief that adolescents are in fact very different than adults with regard to decision-making. The average response of juvenile jurisdiction prosecutors to the scaled questions about similarity of adolescents and adults is 2.1, which mirrors the responses of the defense attorneys. Moreover, these prosecutors state the beliefs that adolescents are influenced by peer pressure, fail to look ahead to the future, and lack the overall judgment of typical adults.

This contradiction – between claiming that adolescents have a fully mature capacity to make decisions, and that their judgment is less well developed than that of adults – was acknowledged by one prosecutor.[26] This prosecutor began to laugh at her responses to the scaled question when she realized that they contradict her previous general statement that adolescents have a mature capacity for decision-making. According to her, the interview questions were "ruining her system." While laughing, she said that the questions caused her to rethink her earlier response. Others fail to notice or to comment on this apparent contradiction:

> Interviewer: In general would you say that adolescents have a level of mature capacity to make decisions about whether or not to commit crimes?
> Respondent: I think they do, I think they have that capacity. The question is whether they think forward like adults. So I don't know whether that's the same, or - Do you follow me on that? They may not necessarily think forward or think about the consequence. Though they know whether it is right or wrong, but they don't necessarily think about the consequences. So, I think it is different. (#27)

Another prosecutor, when asked when youth should be held responsible for their criminal actions, seemed confused and stated that he "had never thought about it before." That is, a legal professional responsible for initiating proceedings to transfer youth to the criminal jurisdiction had failed to ever consider what such an action means, or why it should be taken.

[26] This contradiction could be because the result of generalized "party-line" responses to asking a general question about adolescents' maturity, yet more nuanced and thoughtful responses to detailed questions about specific capacities of maturity.

Generally, New Jersey juvenile jurisdiction prosecutors evaluate culpability based on whether adolescents understand the difference between right and wrong and on the severity of offense, rather than based on nuances of development and maturity. The following is a typical response from juvenile jurisdiction prosecutors about culpability:

> Respondent: I think it depends on the nature of their conduct. I certainly think at a very early age children acquire a sense that killing is wrong. I don't know. I can't…
> Interviewer: Does that mean a kid who does a more serious offense should be held to a more mature standard than a kid who does a less serious offense?
> Respondent: Probably. Yeah. (#14)

However, the prosecutors also express the belief that adolescents' level of culpability is lower than that of adults, regardless of other factors.

And, as one might expect, the New Jersey juvenile jurisdiction judges' stated perceptions of maturity and culpability are midway between those of the prosecutors and defense attorneys. Of the two interviewed judges' expressions of culpability for adolescents, one resembles those of the defense attorneys and the other judge resembles the prosecutors. The former states that adolescents are very different than adults with regard to all facets of decision-making; the latter states that they have mature capacities to make decisions about criminal behaviors, but then rates them as very different than adults with regard to individual capacities of decision-making. Thus, judges offer views that accommodate both perspectives. One judge states that responsibility is determined by the following wide array of factors:

> The nature of the offense. The circumstances of the offense. The kid's background. You have to know something about the background. Is this a kid with a real serious mental problem, you've got to look at that. (#7)

Overall, with some distinctions, New Jersey juvenile jurisdiction prosecutors, judges and defense attorneys are fairly consistent in their expressed views relating to culpability among adolescents. Generally, they all believe in the juvenile jurisdiction's *parens patriae* mission, or at least that adolescents should be evaluated at a standard of reduced culpability relative to adults. Defense attorneys express the belief that adolescents think differently, are less mature, and should be judged via a reduced standard of responsibility with the individual's development in mind. Judges recognize this as well, and state that development is important in determining level of responsibility, but state that they also have a duty to consider the severity of the offense as well. Prosecutors offer generally similar though somewhat contradicting arguments about culpability. They rate adolescents as having a reduced capacity for decision-making, stating that adolescents commit crimes because of their immaturity and that they should be held to a lower standard than adults; yet they argue that if the adolescent commits a severe offense she should be held fully responsible for it.

In sum, during the early stage of case processing, the evaluation of adolescents in the New Jersey juvenile jurisdiction reflects a juvenile justice model. Evaluative criteria include characteristics of offenders, courtroom workgroups form typifications of normal offenses and offenders that allow room for rehabilitating adolescents

perceived as “deserving”, and court actors consider adolescents to be less culpable for offenses than adults.

Sentencing Stage

1. Evaluative Criteria

The evaluative criteria considered by the New Jersey juvenile jurisdiction courtroom workgroups during the sentencing stage are identical to those of the earlier stage of case processing. During this later stage, courtroom interaction focuses on individual offenders, rather than solely on offenses.

In addition to judges asking about “extra-legal” factors such as the defendant’s drug use or behavior at school or home, defense attorneys use this type of offender-focused information to obtain more favorable final dispositions for their clients:

> Interviewer: When you’re arguing why a juvenile shouldn’t be incarcerated, what are the reasons you would normally give?
> Defense Attorney: Anything I can come up with. ... If you can come up with anything in their life. I happen to know that Judge [], for instance, used to box when he was young and I have a kid who has been to the gym and can pronounce the name of the gym that he goes to and I might bring that up as almost an aside and then the judge will take the bait and run with it. So you will do little things like that if you know….there are certain things with [another judge] too. (#25)

Thus, from initial hearings to final sentencing hearings New Jersey juvenile jurisdiction courtroom workgroup members discuss a broad range of topics rather than only debating evidentiary and legal factors that determine legal sufficiency for

conviction. Judges, prosecutors and defense attorneys discuss offense severity and circumstances surrounding the offense (eg. number of co-offenders, prior arrests, level of injury of the victim) in addition to the defendant's family, home life, education, drug use, employment, and perceived attitude.

2. Typifications of Punishments

Above I describe how prior to sentencing, courtroom workgroups in the New Jersey juvenile jurisdiction develop shared typifications of normal offenses and offenders. These shared conceptualizations remain during the sentencing stage of case processing, and are considered in conjunction with an additional shared typifications – normal punishments, or "going rates" of punishment (Sudnow 1965).

The New Jersey juvenile jurisdiction courtroom workgroups in both courts categorize dispositions during the sentencing stage. When I searched through individuals' case files to collect the juvenile jurisdiction quantitative data for two New Jersey counties (see description of data collection, chapter two), a pattern of escalating sanctions was apparent. This pattern is also very clear when observing court proceedings. The pattern of progression is driven by a combination of prior record and offense severity. For all offenses other than severe violence (violence leading to serious injury of the victim): on a first offense the juvenile is diverted from court prior to coming before a judge, on a second offense a judge diverts the case to a counseling program, on a third offense the judge sentences the defendant to a review period of six

to twelve months (after which, if the offender has been compliant and not been rearrested, the case is dismissed), and on a fourth offense the defendant receives probation. Probation might be given more than once, though with continued criminal involvement offenders graduate to the two other available sanctions: suspended sentences (probation with an added threat of a prison term) and incarceration. A defendant's prior record primarily shapes this pattern, though the progression can change based on the severity of offenses; severe offenses involving violence will escalate the progression, and petty offenses lead to non-escalation.

All juvenile jurisdiction court actors with whom I spoke acknowledge the use of this punishment progression during sentencing. For example:

> The kid is supposed to move up in progression. So defense attorneys want that. You don't want to start with the worst penalty. The kids move through a progression of sentences. You give them an opportunity. (#27 – prosecutor)

> Yes, there is a progression. We joke about it a lot because a lot of times defense attorneys will be like, 'he didn't get [a less severe sentence]'. Honestly the first offer is a dismissal. I have dismissed cases where there was no evidence, if I don't think this [the alleged offense] is what happened. We will dismiss. After that, it is just diversion and intake where we take it out of the court system, put [them] in a program and they don't have a record. The next step is a review where they plead guilty, placed on a [review] period, and as long as they follow conditions and don't get reinvolved, the case is dismissed. … If the kid has had a prior even if it is for a diversion, I make an exception because he already had one chance at reforming the conduct, even if he had a diversion beforehand and he successfully pleaded that. The diversion is technically a review period for six months. … Other distinctions that I make personally are home burglaries. I give probation instead of review just because I find it is a more serious crime. There is also crime

> where there is more of a chance of injury and becomes more serious such as if there is an assault and there is a weapon involved whereas it may have been a review from just fighting and beat somebody up; but he pulled out not even a knife or gun because obviously then I am looking at probation. That is more threatening. There is the danger someone is going to get hurt. (#30 – prosecutor)

According to these prosecutors, they offer a progression of sentences through plea bargaining, and this progression changes based on prior record and severity of the offense (see also Lemert 1970; Parker et al. 1981). Some prosecutors discuss this progression of dispositions as a strategy for allowing defendants second-chances that would not be offered to adults:

> That is the general progression. It is not like we collaborate on that. It's like we will give them chances really. That is what juvenile is all about, trying to give them chances so they rehabilitate more so than punish them. (#29)

Defense attorneys also describe this gradual escalation of sanctions. According to one public defender, they use this progression because it indicates what the prosecutor and judge will accept as a sentence:

> That's the prosecutor's philosophy. That prosecutor's philosophy is you got a drug offense. The first time, if it's not a serious drug offense, the first time he goes to the [drug counseling] program, the second time he gets an adjourned disposition. The third time he gets probation. The fourth time he gets a suspended sentence. The fifth time he may get an outpatient or he may have gotten an outpatient along the line. The fifth time or the last clear chance he may get an inpatient drug program. Or he may not even have a drug problem and he may get a residential program. And the sixth time is jail. Now the sixth time you may have a good case. Or

> somewhere along the time you may have a good case so everything is just stayed. (#12)

As the final stop of this progression, prison is only as a last resort option (see Emerson 1981) in the New Jersey juvenile jurisdiction. Prison is reserved for offenders who are extremely violent, or offenders who have exhausted all other less severe court dispositions:

> Generally by the time you are ready to send a kid to [the State training school (prison) for boys], you've been through just about every plea, or the majority of pleas…they've been through every aspect of the system that you can offer unless, of course, they have done something absolutely horrific from the outset – like killing somebody or coming close to killing somebody. But usually we are looking for [training school], the kid has gone through intake review, probation, drug treatment programs whether out-patient or inpatient, on to residential… and a lot of the times they have gone through several residentials. They have exhausted every other remedy they can have, and at that point in time there is literally nothing else to do. Usually the kids who go to [the training school] fit that profile. (#31 – prosecutor)

> To tell you the truth, the kids that get sent to [the training school] run the whole system and have been given the benefit of anything we have available to us, and actually as it stands we send fewer kids to [the training school] than a lot of other smaller counties do. Fewer capital cases anyway. Kids have exhausted all the programs, probation hasn't been successful, the outpatient programs haven't been successful, the residential programs for the juvenile justice have not been successful. At that point, the kid is usually a serious offender and that's when they go. We have really run out of resources. We try to keep them out of there. (#7 – judge)

Thus, more so than normal offenses, there are normal dispositions in the New Jersey juvenile jurisdiction. The court actors share an understanding of what sentences

should be given for which offenders, based primarily on prior record and offense severity.

3. Attitudes about Culpability

I find no distinction in attitudes about culpability or their role in guiding evaluations of adolescents across the two stages of case processing. New Jersey juvenile jurisdiction courtroom workgroup members share an understanding of reduced culpability for youth, and it guides each phase of case processing. During sentencing, these court actors evaluate adolescents with reduced culpability in mind as they try to prescribe appropriate punishments. Hence, similar to case processing prior to arrest, the sentencing stage of case processing in the New Jersey juvenile jurisdiction likewise reflects a juvenile justice model of evaluating adolescents along each characteristic I analyze.

Evaluation in the New Jersey Juvenile Jurisdiction: Juvenile Justice

Overall, the data confirm that evaluation in the New Jersey juvenile jurisdiction conforms to a juvenile justice model. Throughout both stages of case processing, and in each of the two juvenile courts, courtroom workgroups evaluate adolescents according to principles of juvenile justice. The courtroom workgroup members consider individual offenders and their needs in addition to severity of offenses, they share conceptions of going rates of punishment that allow adolescents

chances to reform their behavior, and they recognize the reduced culpability of youth relative to adults. Hence the evaluation of adolescents in the New Jersey juvenile jurisdiction retains elements of a progressive-era notion of *parens patriae*.

In addition, my data do not support prior research predicting that the different professional roles of workgroup members lead to significantly distinct evaluative criteria or perceptions of culpability. Instead, I find that aside from some distinctions between how prosecutors, judges and defense attorneys operationalize culpability, the different court actors in the New Jersey juvenile jurisdiction workgroups approach the evaluation of adolescents with a similar juvenile justice orientation.

New York Criminal Jurisdiction

Prior to Sentencing

1. Evaluative Criteria

In contrast to the consistent evaluative criteria throughout both stages of case processing in the New Jersey juvenile jurisdiction, the evaluative criteria in the New York criminal jurisdiction vary considerably by the stage of case processing. Prior to sentencing, the members of the criminal jurisdiction workgroups debate the evidence against the defendant, rather than discussing other, personal information about the offender:

> Obviously the first order of business is what are the facts. And the DA has his or her witnesses and they have one version. I have my client and possibly other witnesses and I wouldn't say always but

> quite often the version of the facts is totally different. (#18 – defense attorney)

Courtroom observations reveal a routine pattern for this interaction during the early stages of nearly every single case, illustrated by the following typical dialogue. In the following interaction, the prosecutor and defense attorney debate the facts of the offense and the severity of the offender's prior record, with a focus on adjusting the defendant's bail:

> Judge: Do the people wish to be heard on bail?
> Prosecutor: 'Yes your honor. The defendant has been indicted on a second crime while out on the first. Both are violent offenses.'
> Defense Attorney: 'Your honor, his father is here in court and is interested in the case.[27] I was at the indictment for this second case and saw that bail was set with knowledge of both cases, therefore there's no new development and the bail shouldn't change.'
> Judge (to prosecutor): "What are your facts on this case?"
> Prosecutor: 'The victim was on a train, when the defendant and three others approached him with a weapon. They punched the victim and took his money and his metrocard. The defendant and three others were then apprehended on the train. The police recovered fifteen dollars and a metrocard.'
> Defense Attorney: 'About the property recovered. The weapon that was recovered, a knife, was found on the train tracks. But, the defendant never left the train, nor did his co-defendants, so they couldn't have put it there.'
> Judge: 'I think the bail set in criminal court is inadequate, given the defendant's number of contacts and the seriousness of this case.'

[27] By law in New York, bail conditions reflect only the likelihood of the defendant's return to court. Appearance in court by a family member is one of the conditions factoring into a recommendation for pretrial release by the New York City Criminal Justice Agency, the city's pretrial services agency. Thus the defense attorney mentions the father in this hearing not to discuss the defendant's family background or behavior at home, but to demonstrate community ties and a greater likelihood of returning to court for subsequent appearances.

> Defense Attorney: 'He only has these two arrests, both are close together. …'

As this representation of routine interaction shows, the prosecution and defense compete with one another to establish a case for guilt or innocence. To build a case, the prosecuting attorney describes the physical and circumstantial evidence against the defendant. To weaken the prosecutor's case, the defense attacks the veracity of the evidence against the defendant, describes the defendant as a minor participant within a group rather than a primary offender, or downplays the severity of the offense (eg. by describing an assault as self-defense). The judge oversees this process, ensuring that it is conducted in accordance with the law.

2. Typifications of Offenses and Offenders

a. Offenses

Again, before discussing the shared typifications in the New York criminal jurisdiction courtroom workgroups, I first discuss the caseload and nature of cases that these workgroups handle. The New York criminal jurisdiction processes relatively few cases of adolescents. The caseload of each is at or around sixty cases at any one time, with approximately one hundred cases disposed of per year (Criminal Justice Agency 2000, 2001). Because of their status as specialized 'youth parts', most of the cases they handle are JO cases. This means that most defendants are aged fourteen or fifteen, and charged with a serious felony (from the list of JO eligible charges).

Moreover, because of the case screening performed by the prosecutor, only serious cases remain in these courts. These youth parts process other cases aside from those of JO defendants, but usually only if they involve co-defendants of JO defendants, and as a result these defendants tend to be young as well. Hence, the New York criminal jurisdiction workgroups deal with much smaller caseloads and a narrower range of cases than the New Jersey juvenile jurisdiction workgroups.

In contrast to the typifications of normal offenses in the New Jersey juvenile jurisdiction, New York criminal jurisdiction court actors rely on fewer shared categories. In the criminal jurisdiction I study there is little variation among offenses. Only serious felonies appear in these youth parts, due to the exclusion of the designated felony offenses from the juvenile jurisdiction and the prosecutors' screening. With little variation among offenses, there is little need for court actors to form conceptual categories into which they can sort them. Furthermore, as I describe in chapter four there is less stability and familiarity among the criminal jurisdiction courtroom workgroups than the New Jersey juvenile jurisdiction workgroups, which hampers the workgroups' relative ability to develop shared conceptualizations (see Eisenstein et al. 1988).

b. Offenders

As with the New Jersey juvenile jurisdiction, there is very little diversity of defendants in the New York criminal jurisdiction (see chapter six for quantitative data descriptions). This relative homogeneity makes it very difficult to assess how criminal

jurisdiction court actors assess defendants' personalities. In fact, because fewer personal or social characteristics of defendants are discussed in the New York criminal jurisdiction than in the New Jersey juvenile jurisdiction prior to sentencing, I am unable to form any conclusions based on my court observations about how court actors characterize defendants. Yet during interviews, criminal jurisdiction court actors offer comments that resembled the stereotype of defendants held by juvenile jurisdiction court actors:

> Most of the kids I see have parents who are both in jail, grandmother is raising them. They witnessed someone being killed. Bad. (#20)

> I think when you grow up in a place like [Brady County], it's hard not to get arrested. If you are asking me what causes people to commit crime as opposed to people being arrested… … When you live in a place where you see cops on the street arresting people all the time, it just becomes part of your way of life. When I pick a jury and we ask people, "Do you know anyone who has ever been arrested or convicted of a crime?" Everyone does. And so when that becomes the norm, it almost becomes normal to commit crime or get arrested. So something about the socialization… (#19)

These comments suggest that court actors in the New York criminal jurisdiction may hold similar views as New Jersey juvenile jurisdiction court actors of the average, or "normal" adolescent defendant.

3. Attitudes about Culpability

Perhaps surprisingly, the attitudes about reduced culpability among adolescents among the New York criminal jurisdiction court actors mirror the views of the New Jersey juvenile jurisdiction court actors. Workgroup members in both jurisdictions express similar views of adolescent decision-making and culpability. Interviews and court observations in the criminal jurisdiction suggest that the mission of *parens patriae* guides court actors' beliefs; I find that in both New York criminal jurisdiction courts, the court community members perceive adolescents as less able to make decisions about whether or not to commit crimes than adults, and most court actors perceive adolescents as less culpable for crime than adults. Furthermore, the court actors believe that the factors that cause adolescents to commit crime differ from those causing adult criminality. And, the New York criminal jurisdiction court actors give almost identical responses as the New Jersey juvenile jurisdiction actors to the closed-ended questions regarding adolescents' decision-making capacities. Though these general responses are consistent across each professional group and both criminal jurisdiction courts, there are some distinctions between prosecutors, defense attorneys and judges.

The result of general agreement among different court actors in the New Jersey juvenile jurisdiction, but a more offense-based judgment of culpability from the prosecutors than from defense attorneys or judges, is mirrored by the New York criminal jurisdiction results. The New York criminal jurisdiction judges who preside over the youth court parts both express judicial philosophies that closely resemble

premises of juvenile justice. One of these judges identifies himself in public as a "child-saver," stating that he "wants to save as many children as possible."[28] With this self-identification he borrows language from the Progressive-era founders of the juvenile justice system, who envisioned judges as paternal figures who would prevent delinquency through reform-oriented court intervention. He states that he approaches his decision-making role with the understanding that young adolescents are "works in progress," and that one must take into account their mental development and maturity as well as other individualized assessments. His stated views are clear examples of the notion of *parens patriae* applied to contemporary juvenile justice. In response to being asked how he would ideally like to handle cases of adolescents he states:

> …if I was going to do social engineering, I suppose what I would do is create a system where the courts would deal with these issues, the Family [Juvenile Court] and the Supreme [Criminal Court], would be permitted access to impaneled and certified experts in child psychology, child behavior, mental health, where assessments could be done that would be state-of-the-art to evaluate the child's cognitive skills and educational level, where we would have the benefit of a full analysis of the capacity of the individual in front of us and access to expertise at will. And then we can do what is appropriate based on a better understanding [of] who is in front of us. (#2)

This response bears striking resemblance to the positivist philosophies stressed by the Progressive-era founders of the initial juvenile justice system (Platt 1977; see also Garland 1985).

[28] The judge stated this on November 12, 2000 at a meeting held by the judge with all agencies who work in the court.

The other judge offers similar, though not as strongly worded, sentiments about giving youth second chances and attempting to treat them rather than simply punish them. With regard to their reduced culpability, he states:

> I don't think they are functioning on the same level as adults. The punishment is not as severe and for a crime that an adult commits I give a fourteen year old probation and I wouldn't dream of giving a twenty-two-year-old or twenty-five-year-old probation for the same crime because I think youngsters are influenced by peers. I don't think their sense of decision-making and maturity and responsibility and understanding is fully developed. Also they act sometimes impulsively. I think these are all mitigating factors and they certainly have a certain level of conduct. Give them a second chance … depending on the seriousness of the crime. I don't think they function like an adult. (#16)

The defense attorneys who work in the criminal jurisdiction likewise profess a belief in the reduced culpability of adolescents relative to adults. These attorneys work with both adolescent and adult defendants; all attorneys with whom I spoke indicate that their adolescent clients are less mature and less able to understand the consequences of their actions than their older clients. All attorneys believe that as a result, these defendants should receive a "youth discount" rather than punished as if they are fully responsible citizens.[29] According to one attorney:

> I don't think they [adolescent defendants] have a[n adult] level of maturity. They should have some sort of recognition and understanding that what they are doing is right or wrong but when

[29]It is important to note that unlike prosecutors and judges, defense attorneys do not have a conflict between juvenile and criminal models of justice regarding strategies for defending their clients. Their role in both models is to attack the State's case and to humanize the defendants (make them appear more deserving of compassion) by presenting mitigating evidence.

> you're talking straight maturity, particularly inner city kids, I would say they are not anywhere at the maturity level of an adult. (#1)

Most of the prosecutors who work in the New York criminal jurisdiction also express beliefs that adolescents are less culpable for crime than adults. The supervising prosecutors for both the youth parts are former New York City public school teachers, and both understand adolescents to be very different than adults. Both state that most adolescents who commit crimes should be supervised and receive therapeutic services rather than punished as if they were adults. These prosecutors offer statements that adolescents indeed are less mature than adults and – unless their crimes are so severe as to necessitate incarceration to protect the community – should be given individualized treatment rather than punished based solely on offenses. For example, one supervising prosecutor states that plea negotiations for adolescents should focus on "the best thing for the kid [defendant]". And, regarding the culpability of adolescents relative to adults, she states:

> You might be stupid enough when you're fourteen to do something reckless and kill someone and I don't know that you should be held criminally responsible for that, because you're acting like a teenager. (#3)

Other prosecutors offer similar comments about adolescents' reduced maturity and corresponding level of culpability:

> Because they can't defer gratification and they are not goal oriented and they don't think. They don't have the thought processes of adults. And I recognize that. … They should be held

> accountable for adult activity but I don't think the consequences should be the same. (#17)

However, as with the New Jersey juvenile jurisdiction prosecutors, a few New York criminal jurisdiction prosecutors offer contradicting arguments with regard to adolescents' culpability. All respondents state that adolescents' capacities for decision-making are lower than the average capacity of an adult, and that adolescents are less cognizant of future consequences of their behaviors. Yet some prosecutors continue by saying that adolescents who commit serious crimes should be held responsible for those crimes at an adult level, regardless of their reduced cognitive abilities:

> And kids of fourteen, fifteen years old, that committed these crimes, but you know what, they are old…I think if they are old enough to commit crime, they are old enough to understand the ramification of any plea bargain or any disposition and if they have an attorney who will explain it to them. And Judge [xx] is excellent in explaining to them the criteria for any disposition. It's like, 'If you can do the crime, you can do the time.'… And unfortunately, I've seen a lot of these juveniles, they are fourteen, fifteen years old, they look like they are twenty years old and it's physical maturity, it's the lifestyle that they live. …they seem to be so much more mature at such a young age, it's probably a result of the life they live. And certain crimes it's evidence how serious it is. And at fourteen, fifteen years old. So they really should be able to understand the ramifications of what they are doing and they also need to know this is not something they can continue to do and therefore they are being punished. (#23)

Others state that criminal jurisdiction prosecution is a good crime control strategy *because* adolescents are less mature; they express the view that punishment helps teach adolescents how to behave:

> Prosecutor: I would say most of the offenses that I have here, I feel like this person should be treated as an adult and I feel it is appropriate that they are in court. Most of them are gunpoint robberies. There is a lot of those. It's like Chinese delivery guys and things like that and I think it is appropriate that those people be dealt with as adults in Supreme Court. So to the extent to the system now sends those kinds of cases up, I think it's fine.
> Interviewer: What distinguishes them as appropriate?
> Prosecutor: Part of it is, to put a gun in the hands of a kid, is a frightening thing for society, for the community. *Especially a kid who I don't think necessarily understands what it means to kill somebody or the danger inherent in putting a gun to somebody's head.* (emphasis added)
> Interviewer: So that danger necessitates criminal court prosecution?
> Prosecutor: I should hope that it makes them understand the severity of what they've done a little bit more than going to Family Court. Yeah. That this is really serious. And we mean business, that this is not appropriate conduct. And we're not just going to call you a juvenile delinquent and put you in foster care for a year and give you some counseling. (#22)

As these examples illustrate, most court actors in both jurisdiction types and across professional roles agree that adolescents fall short of an average adult's ability to make decisions about whether or not to commit crimes. Most agree that adolescents are therefore less culpable for their offenses than adults, though a few prosecutors suggest that the need for punishment proportional to adolescents' offenses outweighs the mitigation of reduced understanding or maturity.

Hence, prior to sentencing in the New York criminal jurisdiction, a criminal justice model characterizes the evaluation of adolescents. Court actors evaluate defendants based on characteristics and evidence of offenses only, rather than characteristics of offenders. Although courtroom workgroup members consider adolescents to be less culpable for offenses than adults, these attitudes are not enacted in case processing during this early stage.

Sentencing Stage

1. Evaluative Criteria

In contrast to the criminal justice practice of only discussing evidence and characteristics of offenses during the early stages of case processing, once the sentencing phase of case processing begins the New York criminal jurisdiction courtroom workgroups begin to produce juvenile justice by discussing offender-oriented factors. Often defense attorneys introduce offender focused considerations in an attempt to present mitigating circumstances and thus to achieve reduced sentences for their clients. According to one defense attorney, her strategy for dealing with difficult cases – cases in which the evidence is strong enough for conviction and the offense is severe – is:

> To make excuses for the person. They've had a hard life so far, been abused, if they've been neglected, if you can capsulate them from the blame, then there's a chance to make people understand where they're coming from. Try to humanize them. (#5)

Thus, defense attorneys in the New York criminal jurisdiction use characteristics of the defendant to "humanize" the defendants or to offer mitigation for offenses once defendants are convicted and facing the potential for severe punishment.

Other defense attorneys state that they introduce the potential future consequences to the defendant as reasons not to imprison youth during sentencing hearings:

> Well, the pitch is usually to me that my experience has been that any young man that spent any significant amount of time incarcerated is going to come out the worst for it, not the better. Because I don't care if it's [a local juvenile detention facility] or Attica or whatever it may be, it becomes survival of the fittest and a kid who can't survive is going to learn to be tough and he's going to learn a certain edge, I think, that he may…may serve him no purpose down the line other than to defend himself on the street and get into fights and things like that. (#1)

> Interviewer: What reasons would you usually give for why an adolescent shouldn't be incarcerated as a final sentence?
> Defense Attorney: That incarceration is not rehabilitative or remedial and long periods of incarceration are unduly harsh for most of the defendants that I work with. (#4)

As both of these examples illustrate, defense attorneys introduce the rehabilitative goal of protecting the future welfare of the defendant into the sentencing calculus, thereby introducing elements of a juvenile justice model into the criminal jurisdiction sentencing process.

Another method of introducing offender characteristics into the court's discussion is through the external sponsoring agents who participate in New York criminal jurisdiction sentencing hearings. At this point, the external treatment

program representatives assume a considerable role in proceedings (see chapter four). The judges use these programs to gather information on the defendant's home life and educational background, and to fashion a treatment program that fits each defendant's individual needs. By sending defendants to counseling programs prior to final sentencing, the judge enrolls them in programs that supervise the defendants. These programs then send representatives to court who can report on each defendant, including: their educational background; occupational skills; mental, learning or behavioral disabilities; and family support and supervision. The judge uses this information in deciding on the defendant's status, as in the following hearing:

> The defense attorney reads a report from the educational program in which the defendant has been participating while remanded (incarcerated waiting final sentencing). The report says that the defendant has shown outstanding achievement and a great attitude. The defense attorney then argues for the defendant to be released to his own recognizance, because remand is inappropriate given his compliance and success in the program.
>
> Judge: 'Who would care for the defendant if I released him, since his Mom is in the Dominican Republic?'
> Defense attorney: 'His older siblings would – they're in their mid twenties.'
> Judge: 'I don't think that would be adequate supervision, so I won't [release] the defendant [from custody].
> Defense attorney: 'Your honor, we'd like you to reconsider. The [outpatient program agency name] program found the defendant to be acceptable, and they'll take him if you release him.'
>
> The judge asks the defense attorney and prosecutor to approach. He considers releasing the defendant to the program, as requested by the defense attorney.

> Judge: 'But I think that [program agency] alone would not be enough supervision, though, because they don't do curfew checks. This defendant would need a closer watch.'

A judge considering the level of care and supervision, curfew, and presence of parents in the house is characteristic of juvenile justice, not of a criminal justice model in which the primary principles guiding decision-making are severity of offense and length of prior record.

In sum, again I find a bifurcation of case processing in the New York criminal jurisdiction. Prior to the sentencing stage of case processing, the criminal jurisdiction courts only discuss offense-relevant factors in evaluating defendants. Yet during the sentencing stage, offender-relevant factors arise as prominent factors for consideration, as court actors begin to discuss offenders' characters, offenders' social, educational and family background, and future consequences of court actions for the offenders. However, this inclusion of individualized juvenile justice criteria occurs only when the judge (who has extensive discretion in sentencing) perceives the defendant as deserving leniency. According to the judge, most adolescents deserve leniency and second chances – usually the leniency is only denied if court intervention has failed on several prior occasions, or if the offense is so severe (eg. murder, rape or aggravated assault resulting in permanent injury) that protecting the community outweighs his desire to rehabilitate. Thus, a juvenile justice model is applied during sentencing in the criminal jurisdiction to "normal'" cases (Sudnow 1965; Emerson

1969) but not to the most severe cases, for which "last resort" punishments are saved (Emerson 1981).

2. Typifications of Punishments

Because shared conceptualizations of offenders and offenses do not change between stages of case processing, I focus here on shared ideas that shape sentencing: shared typifications of punishments. Similar to the New Jersey juvenile jurisdiction, in the New York criminal jurisdiction shared typifications of punishments – shared ideas of "going rates" of sentences – play a significant role in evaluating defendants during the sentencing stage. I find that instead of categorizing punishments based on an incremental progression (as in the New Jersey juvenile jurisdiction), the New York criminal jurisdiction courtroom workgroup members make distinctions based on the defendant's role in the offense and the level of injury that results from the act.

The criminal jurisdiction court actors recognize that adolescents often commit crimes in groups, and that peer pressure often leads adolescents into illegal activity:

> I don't know about kids these days. I think that there's a lot of peer pressure that they are dealing with. Just even gangs are just taking over the schools. And they are almost dictating patterns of behavior for these other students. It's almost either 'I join them or they are going to beat me up or they are going to rob me.' It's just a matter of doing things to survive, even though they may know it's wrong. (#23 – prosecutor)

Whether the defendant is a leader or a follower in the criminal act is a very important determinant of how court actors interpret an offense.

The second factor by which court actors typify offenses, level of injury, allows decision-makers to sort offenses conceptually based on the amount of harm caused by defendants:

> On certain cases I would say I am willing to take more of a risk, on certain types of young people because I think I've learned that some kids can in a short period of time do some things that get them in trouble that maybe if they get the right type of help. And some other things, I've learned. My wife is a social worker and also a Ph.D. and she works with kids. She sees things. I'm not saying I know what she knows but we discuss these things occasionally in terms of her profession and I think I may have a better handle on it but still a lot of times it's difficult. You want to help them, you want to help somebody, but you're concerned…And one of the things I've learned is that when you see a youngster who's actually hurting other people doing, violence, it really sets off an alarm. This is a whole area of psychology and social work that tells you that there is a big difference between stealing some things or even robbing someone, but not hurting them. Robbing from them but not hurting them. And actually doing physical harm. I think it always sets off alarms and a lot of times it really concerns me that some kids may have unfortunately the capacity for violence that I cannot afford them any help really. (#16 – judge)

This judge uses the level of injury inflicted as an indicator of defendants' psychological well-being, as well as a marker of danger to the community.

These two factors combine to form an *imprisonment threshold* in the New York criminal jurisdiction. Whether or not adolescents go to prison depends primarily on the subjective interpretation of these two factors. Defendants who have hurt others

physically and who cannot claim peer pressure as a mitigating factor face near certain imprisonment in the New York criminal jurisdiction. The following transcript illustrates this imprisonment threshold at work:

> There are two co-defendants here, each with an attorney. Each defendant is charged with two incidents of robbery and assault. The judge begins the hearing by stating the facts of the case that have been presented to him.
>
> Judge: 'The defendants beat the shit out of a forty-year-old. He gets kicked, hit on the head, hit in the chest, and his wallet removed… This would appear that all defendants were acting in concert. The victim ran from them, and they chased him and ran him down like a dog. With the other case they chased him, got him in a choke hold, and hit him with a bottle… In terms of disposition, this just isn't a YO and probation case. I'll look it over, though. … This is a pack of wolves.… In the second case they pulled out a razor and said 'give it up or die.''
>
> One of the attorneys argues repeatedly with the judge that they shouldn't go to prison.
>
> Judge: The fact that Mom and Dad are nice people isn't going to work on this... The fact is that [one co-defendant] is the heavy on this case, that he's the most culpable, so I can't take him out of the case. .. So what I'm saying is that I won't give him YO and probation for belting a forty-year-old man on the head.'
> Attorney 1: 'According to the indictment the victim was ok, he only had a bruise.'
> Judge: 'Here's how it works. When you start using violence with a robbery, you go to jail. That's how it works in this part. If you get violent with a robbery, you've got problems, personal and legal problems. I'm not talking about sending him to state prison for long periods of time. But I am saying he can't get YO and probation. Instead of asking for probation, you should be arguing for YO and one to three years [in prison]. Probation just isn't going to work.'
>
> Attorney 1 continues with his argument that the injury was minor.

> Judge (to Attorney 1 – with a raised voice): 'I've heard enough from you.'
> Attorney 2: 'Your honor, this was a street fight, not a random robbery.'
> Judge (with a dramatically changed tone – much softer): 'Oh, I didn't realize that. I don't see it like that, but maybe it is. (To prosecutor) Does that fit with what you know?'
> Prosecutor: 'Your honor, I don't know if it was a street fight, I'll ask the [Assistant District Attorney] handling this case.'
>
> The judge ends the hearing by rescheduling to learn if this was a street fight or a random robbery.

Initially in this hearing, the judge understands the crimes to be offenses in which innocent victims are injured, and refuses to accept the defense attorney's argument that the injury is too minor to warrant concern. Yet when the judge hears that these acts may have occurred amidst a group fight with other adolescents, he leaves the door open for reconsidering his interpretation of the offense and downgrading its significance. A group fight implies that peer pressure is involved, that the defendants acted as part of a misbehaving gang of youths, rather than calculating criminals, and that the victims are not innocent bystanders. These possibilities cause him to reconsider his understanding of this case.

In the above hearing, the judge mentions YO, or Youthful Offender, status (see chapter two). The judge's decision to ascribe youthful offender status is tantamount to deciding on the imprisonment threshold. If the defendant does not receive YO status, he most likely goes to prison for a sentence length set by statute. If he does receive

YO status, the judge can opt to either place him on probation or send him to prison for a maximum of one and one-third to four years, a significantly shorter sentence than the defendant would receive without YO status. The majority of YO cases receive probation. However, judges occasionally do use YO status to imprison a defendant but to give him a lower prison term than mandated by sentencing statutes. Cases in which the judge gives YO status and a prison term are those that straddle the imprisonment threshold – they are serious enough to necessitate some prison time, but not so serious that the defendant should be imprisoned for a long sentence and left with a felony conviction. The following transcript of a sentencing hearing for such a case demonstrates how the judge struggles with the competing considerations that place this defendant on the imprisonment threshold:

> Judge: 'Miss [ ], you weren't the prime person in this incident, but you participated in a terrible, terrible act. The victim in this act will be permanently affected by it. If this was done out of friendship, or trying to belong, then you need to think about why you do what you do. The victim had a gun to her head, she was burned, she was sodomized with a broom, and she was raped by several people. You think about what happened. (There are gasps in audience as the judge recounts the offense). … I'm satisfied that your role in this was minor, but not so minor as to constitute a defense. This is because you were young, only fifteen years old. This is sufficient reason to give you YO status'. …
> Judge (for the record, not directed at the defendant): 'The interests of justice wouldn't be served by giving her a felony record. I'm sentencing the defendant on two counts of sodomy in the first degree, with a sentence of one year [in prison] on each, to run concurrent, and YO status.'

In this case, the defendant's lack of direct participation and youthfulness convince the judge to sentence her to only one year in prison, and to give her YO status, despite the horrendous nature of the offense.

3. Attitudes about Culpability

Because the evaluation of adolescents in the sentencing stage of the New York criminal jurisdiction focuses primarily on offenders and their needs rather than offenses, the courtroom workgroup members' perceptions of reduced culpability for youth influence this stage of case processing. Their attitudes do not change as a function of case processing, though unlike the offense-driven earlier stage of case processing, they are able to enact these attitudes during the sentencing stage. Defendants who are below the imprisonment threshold – marked by level of injury and the defendant's role in the offense – receive the benefit of the shared attitudes stemming from a *parens patriae* mission in the form of reduced punishments relative to the punishments given to older offenders.

Hence, I find that during the sentencing stage of case processing in the New York criminal jurisdiction, the evaluation of adolescents approximates a juvenile justice model. Evaluative criteria expand to include characteristics of offenders, shared typifications of punishment establish an imprisonment threshold that allows most adolescents to avoid custodial sentences, and courtroom workgroup members enact their attitudes of reduced culpability for youth.

Evaluation in the New York Criminal Jurisdiction: Sequential Justice

The data I present in this chapter show that the model of justice guiding case processing in the New York criminal jurisdiction varies depending on the stage of case processing, with regard to the evaluation of adolescent offenders. During the initial stage of case processing, defendants are evaluated according to principles of criminal justice; offense severity and prior arrest record are the primary evaluative criteria, and shared typifications of offenses guide proceedings. Yet during the sentencing stage, the evaluation of adolescents in the criminal jurisdiction resembles juvenile justice; offender characteristics become salient evaluative criteria, and shared conceptions of reduced culpability for youth lead decision-makers to give many adolescents reduced punishments.

Additionally, the data I present do not support prior research suggesting that court actors in different professional roles (prosecutors, defense attorneys and judges) have very different approaches to evaluating adolescents. Rather, I find that aside from some subtle distinctions in how court actors evaluate culpability – with prosecutors using a more offense-based calculation of adolescents' blameworthiness – the evaluation of adolescents is very similar across court actors within the New York criminal jurisdiction.

Conclusion

In this chapter, I demonstrate that the evaluations of adolescents during the early stage of case processing in the New Jersey juvenile jurisdiction and the New York criminal jurisdiction are very different from one another, just as the prior literature and hypothesized distinction between juvenile and criminal justice predict. Yet during sentencing, evaluations of adolescents in the two jurisdictions are more alike than the conventional distinction between juvenile justice and criminal justice would lead one to believe.

In the juvenile jurisdiction, adolescents are evaluated according to a juvenile justice model throughout all stages of case processing: court actors express a belief in evaluating individual offenders with an eye towards rehabilitation, offender-oriented factors are discussed in court, and court actors conceive of youth as less mature and criminally culpable for offenses than adults. Yet in the criminal jurisdiction, I again find a bifurcation of case processing. Initially, only offense-relevant factors are discussed, but then offender-relevant factors take center stage during criminal jurisdiction sentencing hearings.

Again, the data demonstrate a sequential model of justice in the New York criminal jurisdiction. As a result of this sequential model of justice, I find that the juvenile and criminal jurisdictions pursue juvenile and criminal justice models, respectively, during the early stage of case processing, but that they both pursue a juvenile justice model during the sentencing phase.

CHAPTER 6: PUNISHMENT

In this chapter I test whether the juvenile jurisdiction and the criminal jurisdiction reflect a criminal or juvenile model of justice regarding the last of the three dimensions that distinguishes the two models of justice: punishment. Using both quantitative and qualitative data, I answer three central questions in this chapter: (1) does jurisdiction type affect punishment severity when controlling for other relevant factors?, (2) does court context affect punishment severity when controlling for jurisdiction type?, and (3) does jurisdiction type affect the sanctioning goals of courtroom workgroups? I analyze quantitative data to compare punishment severity across jurisdiction types and across courts, and qualitative data to compare sanctioning goals across jurisdiction types.

A finding that the New York criminal jurisdiction prescribes more severe punishments for adolescents than the New Jersey juvenile jurisdiction (controlling for offense and offender level case factors) would suggest that the criminal jurisdiction reflects a criminal justice model of punishment and the juvenile jurisdiction reflects a juvenile justice model of punishment. If I find that New York criminal jurisdiction court actors express punitive sanctioning goals such as retribution, and that New Jersey juvenile jurisdiction court actors express rehabilitation as a primary sanctioning goal, then this also would support the distinction between a criminal and juvenile model of justice in the criminal and juvenile jurisdictions, respectively, regarding

punishment. However, if I find that the sanctioning goals and punishment severity do not vary across jurisdiction types, or that the juvenile jurisdiction court actors prescribe more severe punishments and hold more punitive sentencing goals, then the evidence will fail to support the difference in punishments suggested by the prior literature between a criminal and juvenile model of justice.

If I find that the severity of punishment or sanctioning goals are significantly different between courts within both jurisdiction types, then I can conclude that court context shapes punishment regardless of jurisdiction type. If I find that sanctioning goals or punishment severity vary between courts within the New Jersey juvenile jurisdiction but not the New York criminal jurisdiction, or within the New York criminal jurisdiction but not the New Jersey juvenile jurisdiction, this suggests that court context affects punishment conditionally on jurisdiction type. If I find no significant distinctions across courts within either jurisdiction type, this would suggest that the variations among court contexts have little effect on punishment.

To test these suppositions I first compare the punishment outcomes of prosecuting adolescents in juvenile and criminal jurisdictions. Using quantitative data I test the degree to which the punishment severity differences between adolescents processed in the New York criminal jurisdiction and the New Jersey juvenile jurisdiction reflect the distinction between juvenile and criminal justice models in the theoretical literature. I then use quantitative data to test whether court context affects punishment severity when controlling for jurisdiction type. Finally, I use qualitative

data to test the degree to which the sanctioning goals held by courtroom workgroup members in the two jurisdiction types reflect a juvenile and criminal justice model.

Below I begin by reviewing the existing literature on the relationship between jurisdiction type and punishment. I continue by describing the samples of quantitative data that I analyze. I then compare punishment severity across jurisdiction types by using the quantitative data to perform descriptive analyses of three punishment outcomes – pretrial detention, final case disposition (whether there was any court action, and if so, the final sentence), and length of custodial sentences (for those who are incarcerated) – across the two jurisdiction types, and multivariate equations estimating the impact of jurisdiction type on sentencing while controlling for other factors. I then perform descriptive comparisons (of pretrial detention, final case disposition, and custodial sentence length) across courts within each jurisdiction type, and estimate multivariate equations to determine the effect of court context on punishment within each jurisdiction type when controlling for other variables. Following these quantitative analyses, I turn to the qualitative data to compare the goals of sanctioning adolescents among court actors in the two jurisdiction types.

Prior Research on Punishment Across Jurisdiction Types

Punishment Severity

According to both political rhetoric and the prior literature, jurisdiction type is important in shaping the punishment outcomes for adolescents because criminal and

juvenile jurisdictions follow different models of justice. Policy-makers who create adolescent transfer policies promote these policies as a means to provide more severe punishments for violent and chronically offending youth (DiFrancesco 1980; National District Attorneys Association 2000). Jurisdiction type is thought to be an important predictor of punishment severity because the range of punishments in the criminal jurisdiction's portfolio includes more severe sentences than in the juvenile jurisdiction (Zimring 2000), and because incarceration is prescribed more frequently than in the juvenile jurisdiction.

Prior research on punishment of adolescents in criminal and juvenile jurisdictions generally supports the distinctions among punishments between a criminal justice and juvenile justice model. This body of research generally concludes that criminal jurisdictions more often pursue a sanctioning goal of retribution and prescribe severe punishments, relative to juvenile jurisdictions (Myers 2001). In contrast, this literature concludes that juvenile jurisdictions pursue a goal of rehabilitation rather than punishment and prescribe more lenient punishments such as probation rather than incarceration. Thus the existing prior research assumes that the punishment of adolescents in the criminal jurisdiction reflects a criminal justice model, and the punishment of adolescents in the juvenile jurisdiction reflects a juvenile justice model. Yet both of these conclusions suffer from a paucity of appropriate comparisons. No comparative research analyzes data to test whether the two jurisdiction types pursue different sanctioning goals in practice. And, prior

comparisons of punishment severity have been plagued by the difficulty of finding comparable cases across juvenile and criminal jurisdictions (see Kupchik, Fagan and Liberman 2003).

The few published studies that analyze punishment severity across jurisdiction type report equivocal results with regard to whether adolescents in criminal jurisdictions receive more certain or severe punishment than adolescents in juvenile jurisdictions. Some early research suggests that juveniles may appear less serious in the "stream of cases" (see Emerson 1991) in criminal jurisdictions in contrast to older, more experienced offenders (Greenwood, Abrahamese and Zimring 1984; see also Kinder et al. 1995; Sagatun et al. 1985). A greater number of studies, however, find that youth transferred to criminal jurisdictions are detained pretrial, convicted and incarcerated more often than youth in juvenile jurisdictions (Bishop et al. 1996; Eigen 1981; Fagan 1996; Fritsch, Caeti and Hemmens 1996; Houghtalin and Mays 1991; Lanza-Kaduce et al. 2002; Podkopacz and Feld 1996; Rudman et al. 1986; Strom, Smith and Snyder 1998; Winner et al. 1997).

In sum, the prior research comparing punishment severity in juvenile and criminal jurisdictions suggests that criminal jurisdictions reflect a criminal justice model and prescribe more severe punishments than juvenile jurisdictions. In contrast, juvenile jurisdictions are more likely to reflect a juvenile justice model and prescribe non-custodial sentences such as probation more often than criminal jurisdictions. Yet this general result largely may reflect a selection process whereby only fairly serious

cases are chosen for waiver to the criminal jurisdiction by prosecutors, judges, or both. As a result, the prior research confounds jurisdiction with important case characteristics that themselves might provoke the jurisdiction transfer: offense severity, level of injury to the victim, and length of defendant's prior record. By comparing cases of adolescents in two states with different thresholds for criminal jurisdiction prosecution, New York and New Jersey, my research design precludes the confounding of jurisdiction and case characteristics that handicaps these prior studies.

Sanctioning Goals

In addition to affecting the severity of punishment, jurisdiction type also may shape the sanctioning goals court actors follow to sentence adolescent offenders. The creation of the juvenile justice system at the turn of the twentieth century was inspired in part by the Progressive-era reformers' desire for adolescents to be sentenced with a goal of rehabilitation rather than retribution (Feld 1999; Platt 1977; Rothman 1980; Ryerson 1978). And, the recent proliferation of laws mandating transfer of youth from the juvenile to criminal jurisdiction was inspired in part by the desire to apply a more retributive and proportional sanctioning goal for the prosecution of violent adolescents (Feld 1999; Zimring 1998). These justice system reforms demonstrate the assumption by policy-makers (mirrored by the literature) that a criminal justice model leads to more punitive sentencing goals in the criminal jurisdiction than in the juvenile jurisdiction (see Mears and Field 2000). Thus, the prior research assumes that a

criminal justice model describes sentencing goals in the criminal jurisdiction and a juvenile justice model describes sentencing goals in the juvenile jurisdiction, yet no research tests the accuracy of this assumption using comparative data across jurisdiction types.

Quantitative Sample Descriptions

Before analyzing the quantitative data, I describe the sample of cases from New York's criminal jurisdiction and New Jersey's juvenile jurisdiction. Table 6.1 displays a description of the offense and offender characteristics for the entire sample, and separated into the two jurisdiction types. Though the cases from each jurisdiction type are similar along most dimensions, they differ in a few important ways with regard to both offender and offense characteristics.

Offender Characteristics

The offender characteristics in the sample include age, sex and race of defendants. As table 6.1 illustrates, the New York criminal jurisdiction sub-sample consists of greater percentages of sixteen-year olds, minority defendants and male defendants than in the New Jersey juvenile jurisdiction. The two jurisdictions show roughly similar breakdowns of racial categories, though there is a larger proportion of white defendants in the juvenile jurisdiction than the criminal jurisdiction, with this

difference offset by a larger proportion of Hispanic defendants in the criminal jurisdiction.

Offense Characteristics

The offense characteristics in the dataset include the offense type at case filing, whether the offense was committed with a weapon, imposition of pretrial detention, prior arrest record, arrests during case processing, whether the defendant has been previously incarcerated, and whether an arrest warrant for the defendant was ordered during case processing. In the New Jersey juvenile jurisdiction a greater percentage of individuals have prior arrest records, are arrested during sampled case processing, and have arrest warrants issued by a judge during case processing.

The distribution of offense types at case filing is another noticeable difference between cases in the two jurisdictions. The New Jersey juvenile jurisdiction cases are nearly equally divided among the three sampled offense types, though the New York criminal jurisdiction cases consist of mostly robbery cases. This is the result of the sampling procedure – cases are selected based on their representation within each state's court system. Thus, sample differences result from natural variation between the two populations sampled. This sampling method includes the most serious fifteen- and sixteen-year old offenders in each state other than adolescents arrested for

homicide or sexual assault.[30] It should be noted that though they involve different behaviors, charges of first degree aggravated assault and first degree robbery are of equal legal severity in New York. In addition to including offense type as control variables in all analyses, to ensure further that accurate comparisons are made between comparable groups of cases, I conduct multivariate analyses using the entire sample as well as separately for robbery cases.

[30] We did not include adolescents arrested for homicide or sexual assault because, although these cases receive great attention by policy-makers and the media, they are rare and potentially atypical. Rather, robbery, assault and burglary represent prototypical serious felonies committed by adolescents (see Zimring 1998).

Table 6.1. Offense and Offender Characteristics of Cases in Descriptive Tests and Sentence Severity Model, Total Sample and in each Jurisdiction

		Total Sample (n=2223) %	Juvenile Jurisdiction/ New Jersey (n=1048) %	Criminal Jurisdiction/ New York (n=1175) %
Offender Characteristics				
Age:	15	33.9	46.9	22.2
	16	66.1	53.1	77.8
Sex:	Male	86.1	82.7	89.1
	Female	13.9	17.3	10.9
Race:	White	8.9	13.3	4.9
	African-American	56.1	54.4	57.5
	Hispanic	29.7	26.4	32.6
	Other and Unknown	5.3	5.9	4.9
Offense Characteristics				
Offense Type:	Robbery	53.6	24.9	79.1
	Aggravated Assault	29.2	43.9	16.2
	Burglary	17.2	31.2	4.7
Associated Weapon Charge		38.2	34.6	41.4
Pre-Adjudication Detention		45.7	41.3	49.9
Presence of Prior Arrests		56.0	66.8	46.3
Arrested During Case Processing		26.5	36.5	17.5
Previously Incarcerated		10.0	3.9	15.4
Arrest Warrant Executed		13.2	18.6	8.5

Summary Statistics

To facilitate the interpretation of my data analysis, I display the mean, standard deviation and range of each offender- and offense-level variables in table 6.2. The offender-relevant variables include: age; sex (coded 1=male, 0=female); and ethnicity (dummy variables indicating white, Hispanic, African-American, and all other ethnicities). A significant debate exists in the current literature with regard to whether offender-relevant variables predict court outcomes (eg. see Albonetti 1997; Kleck 1981; Steffensmeier and Demuth 2000, 2001). I include these variables because this debate focuses primarily on the impact of sex and race on sentencing, which I estimate in the following analyses.

The offense-relevant variables in table 6.2 are: number of prior arrests; number of arrests during the time the sampled case was being processed (labeled concurrent arrests); if the defendant was previously incarcerated (coded 1=yes, 0=no); presence of an associated weapon charge (coded 1=yes, 0=no); most serious offense type (dummy variables indicating robbery, aggravated assault and burglary); if the defendant was detained by the court pending adjudication (coded 1=yes, 0=no); whether a warrant for the defendant's arrest was executed during case processing (coded 1=yes, 0=no); and jurisdiction type (coded 2=criminal, 1=juvenile). I include the variable indicating a weapon charge associated with the three sampled offenses to account for when the sampled offenses are committed with weapons, and thus to help control for offense

severity.[31] Variation Inflation Factors reveal that no independent variables are sufficiently correlated with each other to risk multicollinearity in the following multivariate models.[32] This list of variables is equal to or exceeds those used by many other studies on court outcomes (see, eg. Kleck 1981; Steffensmeier and Demuth 2001; Thomson and Zingraff 1981).

[31] When a weapon charge is present it is a secondary, less serious, offense. For all sampled cases, the sampled arrest charge (robbery, aggravated assault or burglary) was the most legally severe charge. Other indicators of offense severity – level of injury and defendant's role in the offense (primary vs. secondary) were collected but not used in the final dataset. These data, which were taken from police reports, were discarded because they were unreliable, often contradicting (depending on which reports were used to gather the information), and not available for all counties.

[32] All Variation Inflation Factors were less than 2.0.

Table 6.2. Summary Measures of Offender and Offense Characteristics in Sentencing Severity Models

	Mean	Std Deviation	Range
Offender Characteristics			
Age (years)	16.20	0.55	15.0-17.0
Ethnicity			
White	0.09	0.28	0-1
African-American	0.56	0.50	0-1
Hispanic	0.30	0.46	0-1
Other Ethnicity	0.05	0.22	0-1
Sex (Male)	0.86	0.35	0-1
Offense Characteristics			
# Prior Arrests	2.40	4.17	0-26
# Concurrent Cases	0.45	0.96	0-9
Previously Incarcerated	0.10	0.30	0-1
Associated Weapon Charge	0.38	0.49	0-1
Offense Type			
Robbery	0.54	0.50	0-1
Aggravated Assault	0.29	0.46	0-1
Burglary	0.17	0.38	0-1
Detained Pre-Adjudication	0.46	0.50	0-1
Arrest Warrant	0.13	0.34	0-1
Dependent Variable			
Incarcerated	0.15	0.36	0-1

Jurisdictional Analysis of Punishment Severity

I use these quantitative data to test whether the criminal jurisdiction pursues criminal justice and the juvenile jurisdiction pursues juvenile justice, regarding punishment severity. I compare punishment severity across jurisdiction by examining

three case outcomes, pretrial detention, final case disposition (whether there is any court action, and if so, the final sentence), and length of custodial sentence. If I find that the New York criminal jurisdiction detains a larger proportion of defendants pretrial, sentences a larger proportion of defendants to custodial sentences, and prescribes lengthier custodial sentences than the New Jersey juvenile jurisdiction, then I can conclude that a criminal and juvenile model of justice applies to criminal and juvenile jurisdictions, respectively. I begin by examining pretrial detention, final case disposition and custodial sentence length through descriptive comparisons, and then continue by estimating likelihood of incarceration with multivariate equations.

Descriptive Comparisons

1. Pretrial Detention

In table 6.3 I test the hypothesized distinction in punishment severity between the New Jersey juvenile jurisdiction and New York criminal jurisdiction by comparing the percentages of adolescents detained pretrial in the two jurisdiction types. As table 6.3 illustrates, pretrial detention is more likely for adolescents prosecuted in the criminal jurisdiction than in the juvenile jurisdiction. This result holds true for two of the three sampled offense types, robbery and burglary, but not for aggravated assault defendants. This result supports the theoretical contrast between criminal and juvenile justice; it suggests that, with regard to punishment severity as measured by an intermediate punishment (detention), the criminal jurisdiction prescribes more severe

punishment and thus produces a criminal justice model relative to the juvenile jurisdiction for two of three offenses.

I should note that statutorily, the decisions to detain pretrial are guided by different factors in the two jurisdictions. In the New York criminal jurisdiction, the detention result is shaped by a defendant's economic status, because most defendants are offered some monetary bail. According to statute, the bail should be set at a level that will ensure the defendant's reappearance in court, with no other factor being considered. In contrast, New Jersey juvenile jurisdiction judges have greater discretion in this area, and no monetary bail is allowed. As a result, juvenile jurisdiction judges are allowed to consider a wide array of offense and offender oriented factors in deciding simply whether the defendant should be detained or released.

Table 6.3. Percent of Cases Detained Pretrial by Jurisdiction Type and Offense Type

	Juvenile Jurisdiction (n=1048) %	**Criminal Jurisdiction** (n=1175) %
Total	40.9	49.9
Robbery Cases	49.4	54.0
Aggravated Assault Cases	39.3	31.1
Burglary Cases	36.4	45.5

2. Final Case Disposition (Any Court Action and Sentencing)

Table 6.4a continues with the descriptive comparison of the two jurisdiction types by comparing frequency of court action and imposition of different sentences. I use the term "court action" rather than conviction because the meaning of conviction is not clearly equivalent across the two jurisdictions. Both jurisdiction types have middle-ground adjudicatory options that are ambiguously defined as convicted or not-convicted. In New York, this option is called adjourned in contemplation of dismissal, and in New Jersey it is called an adjourned disposition. These options in both states are identical in content; they involve a suspension of the case for a specified period of time. If the defendant is not arrested in that time and complies with all court orders (eg. attending school regularly), the case will be dismissed after the time period. An important distinction between them is that in New Jersey, the juvenile must plead guilty to the charged offense in order to receive this disposition, thus it is clearly a sentence following a conviction. Yet in New York, the resolution occurs without any plea or admission of guilt. Thus, technically this same disposition involves a conviction in New Jersey but not in New York. For the sake of comparing the practical actions of each jurisdiction, I include both as sentencing options, because in both jurisdictions the court supervises the defendant rather than dismissing the case outright.

Overall, a few patterns emerge. One, the criminal jurisdiction takes action in a greater percentage of cases than the juvenile jurisdiction. This adds further support for

the theoretical contrast between a juvenile and criminal model of justice, by showing that the criminal jurisdiction is more likely to give some punishment than the juvenile jurisdiction. To pursue further empirical inquiry into why the criminal jurisdiction takes action in more cases, one would need additional data that was not available to the researcher. Variables such as the level of injury to the victim, the relationship between the offender and victim, and the quality of evidence the prosecutor possesses would be very helpful, as they have been shown by previous research to be significant predictors of conviction (Adams 1983; Mather 1979; Miethe 1987; Rauma 1984; Vera Institute of Justice 1977).

Table 6.4a also displays the different sentencing patterns of each jurisdiction type. As predicted by the theoretical models of justice, the New York criminal jurisdiction is significantly more likely to incarcerate defendants, and the New Jersey juvenile jurisdiction is more likely to impose probation or a suspended sentence. Hence, when measured by the sentences allocated in each jurisdiction type, the criminal jurisdiction prescribes relatively more severe punishments than the juvenile jurisdiction. I group together probation and suspended sentences for two reasons: there is no option of a suspended sentence in this criminal jurisdiction, and receiving one in the juvenile jurisdiction is equivalent to being put on probation in the criminal jurisdiction (but with an added warning that if one is noncompliant with probation rules or gets rearrested, then a prison sentence will be imposed).

These results do vary somewhat as a function of offense type. The most significant departures from this pattern are an equal likelihood of incarceration for aggravated assault cases in both jurisdictions, and a slightly greater use of probation in the criminal jurisdiction for burglary cases. Because of these distinctions I include offense type as a series of dummy control variables in all multivariate analyses that follow.

The two different age groups (fifteen-year-olds and sixteen-year-olds) in the criminal jurisdiction sub-sample are almost identical regarding all case outcomes. Among the fifteen-year-olds in this jurisdiction, 58.5% receive some court action and 13.9% are incarcerated; among the sixteen-year-olds these numbers are 58.6% and 16.1%. And, age is not a significant predictor of outcomes in any multivariate models (below). Thus, despite the different statuses of fifteen- and sixteen-year-olds within New York's criminal justice system[33], they are treated similarly.

3. Custodial Sentence Length

Finally, table 6.4b displays the average custodial sentence lengths, in months, for those who are incarcerated. The average custodial sentence length in the New York criminal jurisdiction is nearly three times greater than the average in the New Jersey juvenile jurisdiction. Though the results fluctuate somewhat by offense type, none of the average sentence lengths in the juvenile jurisdiction matches the lowest

[33] Recall that because fifteen-year-olds fall under the Juvenile Offender Law they are a distinct category of offender by New York Law than the sixteen-year-olds, who are above the general age of majority.

average in the criminal jurisdiction. This table clearly demonstrates that adolescents sentenced to incarceration in the criminal jurisdiction are sentenced to significantly longer prison terms than adolescents incarcerated in the juvenile jurisdiction.

Each of the three descriptive comparisons – pretrial detention, final disposition, and custodial sentence length – clearly supports the distinction between a juvenile model of justice and criminal model of justice. By finding that the criminal jurisdiction produces more severe punishments as measured by three court outcomes, the results suggest that with regard to punishment severity, a criminal justice model is pursued in the criminal jurisdiction, relative to a juvenile justice model in the juvenile jurisdiction.

Multivariate Tests

Next, to determine the impact of jurisdiction type on sentence severity while controlling for characteristics of offenders and offenses, I estimate multivariate equations predicting a dependent variable of incarceration. I use multivariate analyses to determine if jurisdiction type significantly predicts the likelihood of incarceration when controlling for individual and case factors. If I find that prosecution in the New York criminal jurisdiction is significantly and positively related to likelihood of incarceration, then the results will add further support to the distinction between a juvenile justice model in the juvenile jurisdiction and a criminal justice model in the criminal jurisdiction.

I use incarceration as a dependent variable, because the decision to incarcerate is perhaps the most crucial sentencing decision. It offers a clearer comparison of jurisdiction types than would the juxtaposition of other sentencing decisions, which may have different meanings across jurisdictions, or may be invoked and enforced differently. Of course custodial sanctions imposed by juvenile and criminal jurisdictions differ from each other regarding duration, type of institution, and conditions of confinement (Forst, Fagan and Vivona 1989). Yet on a basic level of comparison imprisonment is a fairly similar punishment in both systems, in that it always involves deprivation of liberty through coercive means in custodial institutions.

1. Modeling Methods

I use Heckman two-stage models to predict incarceration. I do so because any model predicting sentencing practices includes a censored sample, in that only convicted cases are included in models with sentencing as the dependent variable (Berk 1983; Breen 1996).[34] The Heckman two-stage model produces parameter estimates that take censoring into account – a censoring parameter is estimated and then incorporated into the probit analysis of the dependent variable.[35] I use probit analyses because the dependent variable is dichotomous; probit models take into consideration that the dependent variable only varies between 0 and 1, and are thus

[34] For the sake of caution, I experimented with an alternative modeling method to confirm my results using the Heckman two-stage method. I discuss this in Appendix 2.

[35] After much experimentation, I included following predictors of the first stage analysis, the selection stage: age, sex, white, bench warrant, detained, number of prior arrests, associated weapon charge, the total number of charges, and dummy variables for each individual court other than the contrast.

better suited for a dichotomous dependent variable than OLS regression, which assume the dependent variable to be continuous (see Greene 1997).[36] Conviction in the original court is the censorship value included in each model, meaning that cases only remain in the censored sample if they result in conviction.[37]

I estimate the models using a robust cluster by court, which adjusts the standard error of each coefficient to account for any systematic differences among cases from each of the six included courts. The robust cluster procedure is a form of estimation that allows for non-independence of observations within a given group, in this case within each court.

I estimate two separate models to examine the effect of jurisdiction on the likelihood of incarceration, controlling for other factors – I display these models in table 6.5. The first model estimates the imposition of a custodial sentence for the total sample, using the independent variables.[38] The second model restricts the analysis to only robbery cases. I do this to test whether the results from the first model are the result of the greater proportion of robbery cases in New York.[39] A statistically significant coefficient for jurisdiction type would signify that, controlling for all other factors, jurisdiction type affects punishment severity. A positive coefficient would

[36] All multivariate analyses are performed in the STATA 7 statistical package.
[37] Consistent with the above descriptive analysis, I consider "conviction" to mean any court action other than diversion from court, acquittal, or dismissal.
[38] In Appendix 3, I return to this first model and compare it to a model with interaction terms. I analyze these two models to test for a significant interaction between jurisdiction type and other predictor variables on the likelihood of incarceration.

indicate greater punitiveness in the criminal jurisdiction (as hypothesized); a negative coefficient would indicate greater punitiveness in the juvenile jurisdiction.

It should be noted that I do not empirically model the likelihood of conviction or custodial sentence length. Conviction is not modeled here (other than being included as the censorship parameter in the Heckman two-stage procedure) for two reasons. One, the data do not include what has been found to be one of the most important determinants of conviction – quality of evidence presented by the prosecutor (Adams, 1983; Rauma, 1984; Vera Institute of Justice, 1977). Without variables measuring quality of evidence, models of conviction would suffer from omitted variable biases. Two, because the dispositional categories and court procedures for reaching conviction vary across the two jurisdictions, one cannot accurately compare them using multivariate procedures.[40]

I do not estimate length of custodial sentence in the multivariate analyses because the data are not comparable across jurisdictions. In New York, the data-set includes estimated sentence lengths, with the estimate calculated as two-thirds of the maximum sentence.[41] No such estimate is feasible in New Jersey; because New Jersey juvenile jurisdiction judges prescribe indeterminate prison sentences, there is great variation in actual amounts of time served. Instead, I obtained the actual

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[39] I perform this analysis for robbery but not for the other two arrest charges included, aggravated assault and burglary, because of the small numbers of New York burglary and assault cases.
[40] See the above discussion of the "adjourned in contemplation of dismissal" disposition in New York and "adjourned disposition" in New Jersey.

custodial release dates for each sampled individual and calculated the length of custodial sentence served. In addition, the data-set contains no information on custodial facility bed-space or parole board decision-making, both of which would be crucial for predicting the length of sentences that are served. Restricting the analyses to whether or not courts prescribe prison sentences allows for analysis of accurate and complete data bearing upon a highly significant sentencing choice (i.e. incarceration).

2. Model Results

a. Jurisdiction

Table 6.5 presents the results of the first two probit models with a dependent variable of incarceration. Looking at the results of model 1, the total sample model, we see that the coefficient for jurisdiction type is positive and statistically significant. In fact, as measured by its coefficient size (B) and its standardized coefficient (z), jurisdiction type tells us more about the likelihood of incarceration than any other variable in model 1. This result supports the distinction between a juvenile justice model and criminal justice model by demonstrating that sentencing is more punitive in the criminal jurisdiction than the juvenile jurisdiction. This suggests that, with regard to punishment severity, criminal jurisdictions do indeed follow a criminal justice model and juvenile jurisdictions do indeed follow a juvenile justice model.

b. Offense Characteristics

[41] This estimate was used after consulting with the New York City Criminal Justice Agency, who provided the data and have tested this ratio and found it to be the best available estimate.

Overall, model 1 suggests that more serious cases are more likely to end in incarceration, and that jurisdiction type matters when controlling for all other variables. A number of variables relating to offense severity are significant: number of prior arrests, being detained during case processing, having an associated weapon charge, having an arrest warrant filed during case processing, and a history of incarceration. Pretrial detention may be significant either because it acts as a proxy for offense severity (assuming more serious offenses are more likely to be detained), or because judges' decision-making at previous stages of case processing informs subsequent sentencing decisions (Albonetti 1997; Bortner 1982; Emerson 1991). The significance of prior arrest records and histories of incarceration may indicate either the importance of offending background, that decision-makers are less willing to offer second chances to more persistent offenders due to considerations of risk of re-offending (and thereby jeopardizing public safety), or that defendants with prior justice system experience are "labeled" as having a bad character and punished more severely due to the personal degradation (eg. Emerson 1969; Lemert 1967; Schur 1979). Having an associated weapon charge is a decent measure of offense severity, as it indicates whether the defendant committed one of the sampled offenses (robbery, burglary or assault) with a weapon rather than without one. Finally, an arrest warrant indicates that the defendant either failed to appear before court or was suspected of a crime while the case was progressing; this variable might be used as an indicator by court decision-makers of untrustworthiness or continued offending behavior.

c. Offender Characteristics

The only significant variable in the model (other than jurisdiction) that is not at least indirectly related to offense severity or severity of the defendant's offending history is sex. The coefficient for the variable for sex indicates that male defendants are more likely to be incarcerated when controlling for other factors. It comes as no surprise to find that males stand a greater risk of incarceration than females, though a more thorough test of sex differences in sentencing would need to add cases of less serious and status offenses to the sample and test whether females are punished more severely for status offenses. Status offenses would allow for a better test of sex differences among adolescents because prior research focuses on juvenile jurisdictions' efforts to police girls' morality through punishment for status offenses (Chesney-Lind 1977, 1988; Chesney-Lind and Shelden 1992).

Race is not a significant predictor of incarceration in this model. Previous research on the influence of race on outcomes of prosecution has found mixed results (for a review see Albonetti 1997; Steffensmeier and Demuth 2000). However, there are very few white youth in this sample; according to a recent citywide report on minority overrepresentation among JO defendants in New York, only 4% of JO cases filed in New York City's criminal jurisdiction – and 2% of cases convicted there – involved white defendants (Liberman et al. 1996). The under-representation of white youth makes statistical comparisons difficult, and suggests a racial filtering process occurring before court at prior decision-making junctures such as the decision to arrest

or to formally prosecute. Of course, it is possible that few whites commit these crimes, and that the rarity of their appearance in court is representative of their offending rates. Yet this would contradict previous evidence concerning racial screening of juveniles (Bishop and Frazier 1988; Dannefer and Schutt 1982; Sealock and Simpson 1998), as well as self-reported offending rates (Huizinga and Elliott 1987).

Table 6.4a. Percentage of Cases Acted on, and Percentage Receiving Each Sentence Category, by Jurisdiction Type and Offense Type at Case Filing

	Juvenile Jurisdiction (New Jersey)				Criminal Jurisdiction (New York)			
	Robbery	Agg. Assault	Burglary	**All Juvenile Jurisdiction**	Robbery	Agg. Assault	Burglary	**All Criminal Jurisdiction**
	(n=261)	(n=460)	(n=327)	**(n=1048)**	(n=930)	(n=190)	(n=55)	**(n=1175)**
	%	%	%	**%**	%	%	%	**%**
Any Court Action	55.6	51.3	66.7	**57.2**	68.2	58.2	72.7	**66.8**
if any court action:								
Adjourned Disposition/Adjourned in Contemplation of Dismissal	26.2	27.1	22.5	**25.2**	24.1	57.3	35.0	**29.4**
Fine / Alternative to Incarceration	6.9	3.4	4.2	**4.5**	0.6	3.6	0.0	**1.0**
Probation or Suspended Sentence	52.4	54.3	67.9	**58.8**	37.2	23.6	30.0	**34.9**
Incarceration	14.5	15.3	5.5	**11.5**	38.0	15.5	35.0	**34.7**

Table 6.4b. Average Custodial Sentence Length for Incarcerated Cases, in Months by Jurisdiction Type and Offense Type at Case Filing

	Juvenile Jurisdiction				Criminal Jurisdiction			
	Robbery	Agg. Assault	Burglary	**All Juvenile Jurisdiction**	Robbery	Agg. Assault	Burglary	**All Crim. Jurisdiction**
Average Sentence Length	12.2	8.0	9.4	**9.5**	28.1	15.1	26.2	**27.2**

Table 6.5. Unstandardized and Standardized Coefficients for Two-stage Probit Regression of Incarceration, Total Sample and Robbery Cases

	Model 1: Total Sample				Model 2: Robbery Cases			
	B	Std. Error	Z		B	Std. Error	Z	
Age	-0.053	0.072	-0.73		-0.112	0.089	-1.26	
Sex (0=female; 1=male)	0.413	0.156	2.62	**	0.487	0.279	1.75	
Ethnicity Dummies (contrast=African American)								
White	-0.114	0.157	-0.73		0.230	0.366	0.63	
Hispanic	0.071	0.124	0.57		-0.023	0.202	-0.11	
Other Ethnicity	-0.151	0.139	-1.09		-0.196	0.128	-1.53	
Offense Type (contrast=robbery)								
Burglary	-0.365	0.199	-1.84					
Aggravated Assault	-0.149	0.096	-1.55					
Associated Weapon Charge	0.270	0.112	2.42	*	0.268	0.136	1.96	*
Detained	0.873	0.239	3.66	***	1.296	0.185	7.01	***
Number of prior arrests	0.064	0.006	10.72	***	0.037	0.013	2.75	**
Number of concurrent arrests	0.101	0.052	1.95		0.147	0.067	2.20	*
Previously Incarcerated	0.928	0.125	7.43	***	1.097	0.149	7.36	***
Arrest Warrant	0.312	0.149	2.10	*	0.487	0.297	1.64	
Jurisdiction Type (1=juvenile; 2=criminal)	1.200	0.103	11.62	***	1.163	0.143	8.16	***
Constant	-2.814				-2.584			
Log Likelihood	-1803.608				-1047.983			

*p<.05; ** p<.01; ***p<.001

d. Model With Robbery Cases Only

Model 2 in Table 6.5 presents the results of the analysis using only robbery cases. If the results of model 2 are vastly different than model 1, this would suggest that the sentencing process for robbery cases varies from the sentencing process for assault and burglary cases, which would complicate the comparisons between the two jurisdiction types (given their disparate distributions of offense types). However this is not the case. Most of the statistically significant coefficients in model 1 also are significant in model 2 (despite some differences: coefficients for sex and arrest warrants are not significant in model 2, but the variable for concurrent arrests is significant[42]), and all significant coefficients are of the same sign. Overall one can conclude that the sentencing process for robbery cases empirically is very similar to the sentencing process for the entire sample.[43] Hence, regardless of the distribution of offense types, the criminal jurisdiction reflects a criminal justice model and the juvenile jurisdiction reflects a juvenile justice model regarding punishment severity, as measured by likelihood of incarceration.

In sum, the results demonstrate clear and robust support for the hypothesized distinction between models of justice. Adolescents prosecuted in the New York criminal jurisdiction are significantly more likely to be incarcerated than adolescents

[42] Although these coefficients vary between the two models, the differences are not large. The coefficients for sex and arrest warrants are close to statistical significance in model 2, as is the variable for concurrent arrests in model 1.

[43] I repeat this analysis by excluding burglary offenses from the full sample. Using only the aggravated assault and robbery cases, the results mirrored those of both previous models.

prosecuted in the New Jersey juvenile jurisdiction, controlling for offense- and offender-level variables. This significant disparity in punishment severity supports the theoretical distinction between a criminal justice model in the criminal jurisdiction and a juvenile justice model in the juvenile jurisdiction.

Court Context Analysis of Punishment Severity

In addition to testing the effect of *jurisdiction type* on punishment severity, I also test the effect of *court context* on punishment severity when controlling for jurisdiction type. In the two previous chapters I find no significant effect of court context on either formality of case processing or the evaluation of adolescents; I now use quantitative data to test whether court context shapes punishment outcomes – pretrial detention, final case disposition and custodial sentence length – within each jurisdiction. If I find that punishment severity is significantly different across court context within each jurisdiction, then I can conclude that court context does influence this one dimension of the models of justice guiding criminal and juvenile jurisdictions. Mirroring the above tests of jurisdictional differences, I begin by examining pretrial detention, final case disposition and custodial sentence length through descriptive comparisons, and then continue by estimating likelihood of incarceration with multivariate equations.

Descriptive Tests

Table 6.6a displays frequency of detention, court action and imposition of sentences across the six different courts – three within each jurisdiction type. Table 6.6b displays the average custodial sentence length for incarcerated cases. These tables show that the use of detention and the frequency of any court action vary considerably by court within each jurisdiction. However, the likelihood of incarceration (for defendants given any court action) and custodial sentence lengths (among defendants who are incarcerated) both are fairly consistent within each jurisdiction type, and show a larger disjuncture as a function of jurisdictional difference than court difference within jurisdiction. This result lends limited support to the idea that local legal factors shape punishments within jurisdiction type. Yet this result is not robust, and provides an uncertain answer to my question of whether court context matters in shaping punishment severity. I continue with the multivariate analysis to look further for significant court-level effects on punishment severity.

Table 6.6a. Percentage of Cases Detained Pretrial, Percentage Acted on, and Percentage Receiving Each Sentence Type, by Jurisdiction Type and Court Within Jurisdiction

	Juvenile Jurisdiction (New Jersey)				Criminal Jurisdiction (New York)			
	Court 1 (n=401) %	Court 2 (n=490) %	Court 3 (n=157) %	**All Juv. Jurisdiction (n=1048) %**	Court 1 (n=377) %	Court 2 (n=398) %	Court 3 (n=400) %	**All Crim. Jurisdiction (n=1175) %**
Detained Pretrial	43.1	35.1	53.5	**40.9**	57.8	49.9	42.4	**49.9**
Any Court Action	71.1	36.7	85.4	**57.2**	71.1	67.8	61.7	**66.8**
if any court action:								
Adjourned Disposition/Adjourned in Contemplation of Dismissal	34.0	27.8	3.0	**25.2**	24.3	32.0	31.4	**29.4**
Fine / Alternative to Incarceration	3.2	10.0	0.0	**4.5**	1.5	0.7	0.8	**1.0**
Probation or Suspended Sentence	49.9	53.9	84.3	**58.8**	33.2	35.3	36.7	**34.9**
Incarceration	13.0	8.3	12.7	**11.5**	41.0	32.0	31.0	**34.7**

Table 6.6b. Average Custodial Sentence Length for Incarcerated Cases, in Months, by Jurisdiction Type and Court Within Jurisdiction

	Juvenile Jurisdiction				Criminal Jurisdiction			
	Court 1	Court 2	Court 3	**All Juvenile Jurisdiction**	Court 1	Court 2	Court 3	**All Crim. Jurisdiction**
Average Sentence Length (months)	7.9	8.9	13.7	**9.5**	25.0	29.8	27.4	**27.2**

Multivariate Tests

Estimating the effects of court context on the imposition of custodial sentences within each jurisdiction type allows me to use a more robust test than descriptive analysis to assess the influence of court context on punishment severity. I examine court influences by separating the jurisdictional model into two separate models, one for each jurisdiction, and introducing indicator (dummy) variables for two of the three courts in each jurisdiction. This allows me to examine whether prosecution in different courts within each jurisdiction type is significantly related to the likelihood of incarceration, and thus whether court context significantly shapes punishment severity.

For the sake of simplicity I use logit analyses to test the predictive ability of court context when modeling incarceration.[44] In table 6.7, I present two models – one for each jurisdiction. These models are similar to the models in table 6.5, in that they estimate the likelihood of incarceration, and use all the same independent variables other than jurisdiction type. Rather than including jurisdiction type, I perform the analyses separately for each jurisdiction and include dummy variables indicating individual courts. If I find that the court context variables significantly predict the likelihood of incarceration within the New Jersey juvenile jurisdiction but not the New York criminal jurisdiction, or within the New York criminal jurisdiction but not the

[44] Using a logit analysis rather than Heckman two-stage models avoids the problem of specifying county differences in two places – in both the censor selection criteria and in the main model.

New Jersey juvenile jurisdiction, this suggests that court context affects punishment conditionally on jurisdiction type. If I find no significant distinctions across courts within either jurisdiction, this would suggest that the variations among court contexts have little effect on punishment.

The results of models 3 and 4 both demonstrate no effect of individual court context on the likelihood of incarceration. This fails to show evidence that court context significantly shapes the severity of punishment within either the criminal or the juvenile jurisdiction.[45] Thus, by finding no significant effect of court context on punishment severity, once again my results fail to support prior research suggesting the importance of local legal culture.

Despite this lack of effect of court context variables in models predicting incarceration, the dummy indicators for courts do assist our ability to model punishment outcomes. Recall that dummy variables for court were part of the first stage (the censoring stage) of the Heckman two-stage equations in the jurisdictional analysis. In considering the effect of individual court, I replaced these variables with the variable for jurisdiction type. The results indicate that unlike predicting incarceration, the first stage of the two-stage model is better estimated by using court

[45] I re-estimate these models with county-level demographic characteristics as well, to look for any broader contextual influences. I test the models by adding variables for the following: the percentage of residents who are counted as white and not Hispanic, the percentage of youth population under the poverty line, the percent of residents who are unemployed, and the percent of the population younger than eighteen. None of these variables produce statistically significant coefficients, nor do they add to the predictive ability of either model.

rather than jurisdiction type. In other words, rates of any court action are influenced by court identity even if incarceration rates are not.

Table 6.7. Unstandardized and Exponentiated Coefficients for Logit Regression of Incarceration, Juvenile Jurisdiction Model and Criminal Jurisdiction Model

	Model 1: New Jersey Juvenile Jurisdiction				Model 2: New York Criminal Jurisdiction			
	B	**Std. Error**	**Exp(B)**		**B**	**Std. Error**	**Exp(B)**	
Age	0.062	0.288	1.064		-0.336	0.193	0.715	
Sex (0=female; 1=male)	1.719	0.784	5.576	*	0.404	0.366	1.498	
Ethnicity Dummies (contrast=Afr. American)								
White	0.477	0.760	1.611		-0.278	0.499	0.758	
Hispanic	0.284	0.417	1.329		0.041	0.224	1.042	
Other Ethnicity	0.059	0.871	1.061		-0.430	0.436	0.650	
Offense Type (contrast=robbery)								
Burglary	-1.248	0.542	0.287	*	-0.019	0.464	0.981	
Aggravated Assault	-0.040	0.402	0.960		-0.741	0.350	0.477	*
Associated Weapon Charge	0.734	0.388	2.083		0.361	0.203	1.435	
Detained	2.043	0.537	7.715	***	2.342	0.246	10.398	***
Number of prior arrests	0.155	0.028	1.168	***	0.063	0.058	1.065	
Number of concurrent arrests	0.064	0.116	1.066		0.538	0.161	1.713	***
Previously Incarcerated	1.761	0.597	5.819	**	1.745	0.301	5.728	***
Arrest Warrant	0.751	0.419	2.118		0.571	0.351	1.771	
County Variables (contrast=county 1)								
County 2 Juvenile Jurisdiction	-0.642	0.463	0.526					
County 3 Juvenile Jurisdiction	0.297	0.428	1.345					
County 2 Criminal Jurisdiction					0.104	0.239	1.109	
County 3 Criminal Jurisdiction					0.065	0.252	1.067	
Constant	-7.574				2.209			
Log Likelihood	-255.035				-668.122			

*p<.05; **p<.01; ***p<.001

Sanctioning Goals

At this point, I turn to the qualitative data to analyze the sanctioning goals held by court actors in the two jurisdiction types. According to a juvenile justice model and a criminal justice model, one would expect that the sanctioning goals in the criminal jurisdiction are more punitive than in the juvenile jurisdiction. If this is the case, I should find that a sanctioning goal of retribution or incapacitation guides sentencing in the criminal jurisdiction, and a sanctioning goal of rehabilitation guides sentencing in the juvenile jurisdiction. To compare sanctioning goals across jurisdiction types, I consider the courtroom observations and interviews on which I rely for the qualitative analyses in previous chapters.

As I illustrate in chapter two, the statutory goals of each jurisdiction are very different from one another. The New Jersey juvenile jurisdiction follows a dual statutory mission of community protection and rehabilitation; court actors are instructed to consider a defendant's best interests and future welfare in addition to protecting the community. In contrast, the New York criminal jurisdiction is not statutorily guided by any rehabilitative goal such as the defendant's future welfare or best interests. Rather, New York law establishes goals of retribution and incapacitation for sentencing in the criminal jurisdiction.

However, this statutory distinction of sentencing goals may or may not correspond to actual sanctioning goals held by courtroom decision-makers in the

criminal jurisdiction and juvenile jurisdiction. If the juvenile jurisdiction court actors do indeed hold rehabilitative goals relative to criminal jurisdiction court actors, and the criminal jurisdiction court actors hold more punitive sanctioning goals than the juvenile jurisdiction court actors, then this will add further support to a criminal justice model of punishment in the criminal jurisdiction and a juvenile justice model of punishment in the juvenile jurisdiction.

New Jersey Juvenile Jurisdiction

Overall, I find that New Jersey juvenile jurisdiction court actors in each professional role do indeed follow the statutory dual mission of rehabilitation and punishment. Each court actor I interviewed in the juvenile jurisdiction expresses a belief that sentencing in the juvenile jurisdiction should attempt to rehabilitate juveniles, but also to protect the community by incarcerating "last resort" cases (see Emerson 1981):

> When you do juvenile, it's a lot different than doing adult. With adult, you really are just dealing with crime and punishment. With juvenile you're dealing with rehabilitation. And when I look at the police report, I am thinking only as a lawyer, who is trying to win a case. When I speak to the parents, I am thinking more of social worker part of my job, where I have the best interest of the child at heart, trying to work towards his rehabilitation. What is wrong with the kid? What is his background? (#25 – defense attorney)

> This isn't an adult [jurisdiction] where you are looking for the idea of retribution and punishment before rehabilitation. In juvenile, you are looking at rehabilitation first. (#30 – prosecutor)

> There is a little bit more expectation [in the juvenile jurisdiction than in the criminal jurisdiction] that these kids are going to have several shots at some sort of rehabilitation and not just punishment straight out from the beginning unless they have done something horrifically awful from the get go. (#31 – prosecutor)

The juvenile jurisdiction's statutory mandate requires that defendants are evaluated with an eye toward whether or not they can be treated through education or counseling. The following court transcript illustrates the juvenile jurisdiction's focus on treatment through a medical model, as prescribed by the progressive-era founders of the juvenile justice system:

> Judge: '[defense attorney], you and I have discussed this many times before. You know I don't believe in outpatient treatment without inpatient treatment.
> He's messed up before, how do I know he won't do it again?'
> Judge (to defendant): 'What drugs are you using?'
> Defendant: 'Angel dust and marijuana.'
> The judge then lectures the defendant on telling the truth, asks again, and defendant says same thing.
> Judge: 'Tell me the truth. Understand that we're asking in order to help you, so we know how to help you. If you go to the Doctor with a heart problem, you wouldn't lie, you'd be honest so that he could help you.'
> The judge then sentences the defendant to probation of eighteen months with an outpatient program.
> Judge: 'If you come back, you better bring a toothbrush!'

Thus the juvenile jurisdiction court actors approach punishment with a presumption of finding a disposition that meets the treatment needs of the defendant.

Because they are linked to the state's family welfare system, the juvenile jurisdiction has many non-custodial sentencing options that can be prescribed in an attempt to rehabilitate. Agencies connected with the juvenile jurisdiction courts – with

whom they even share office space on the same floor in both courts – are able to provide the court with alternatives to incarceration. The Office of Probation, the Division of Youth and Family Services, and other State funded agencies offer counseling and treatment programs that the juvenile jurisdiction uses as non-custodial punishments. These agencies provide services such as anger management counseling and workshops encouraging youth to avoid drugs. When adolescents are sent to these programs, they are required to abide by rules such as curfews, drug testing, and reporting regularly to counselors.

To be clear, despite the non-custodial options available in the juvenile jurisdiction and the statutory goal of achieving rehabilitation, punishment is still a consideration. The sentencing statutes make both goals explicitly clear. Juvenile jurisdiction court actors give serious consideration to harsh punishments such as incarceration in order to protect the community from predatory youth when they believe it necessary:

> I think the purpose [of juvenile court] is twofold, to get them the help that they might need. At least for me it's twofold. And obviously punitive in nature. I don't think anyone will deny this, sentences often reflect the nature of the crime. So while certainly the advocates for the juveniles are for rehabilitation, you can go just about anywhere…there are many different types of outlets for rehabilitation. Not all of them are at [the state juvenile prison] or [residential juvenile justice commission] programs. So obviously the system recognizes the need to keep the community safe and the need to punish offenders. (#14 – prosecutor)

This dual goal of rehabilitation and punishment is mentioned by several court actors in interviews, and even stated in court:

> Judge (to defendant): 'Given that there are two purposes to the juvenile justice system, punishment and rehabilitation, you're to be put on probation. This is an offense for which an adult would almost certainly go to prison.' (Walker County juvenile court)

The sanctioning goals of juvenile jurisdiction actors are consistent across the two courts I studied and invariant across stage of case processing. As the above statements by court actors make clear, juvenile jurisdiction courtroom workgroup members take seriously the statutorily defined dual purpose of the juvenile jurisdiction: to punish and to rehabilitate. Both of these goals guide their apparent behaviors in court, suggesting that the juvenile jurisdiction courtroom workgroups do indeed pursue a juvenile justice model of rehabilitative sanctioning goals.

New York Criminal Jurisdiction

Perhaps surprisingly, the criminal jurisdiction court actors pursue a similar goal of rehabilitating adolescents. Recall how criminal jurisdiction workgroups bifurcate case processing into two phases, whereby they practice elements of a criminal justice model during the early stages but a juvenile justice model during the sentencing stage. As part of this bifurcation into what I have called a sequential model of justice, the courtroom workgroups pursue a goal of sentencing deserving youth (below the imprisonment threshold) to treatment-oriented sentences. This is best

displayed by the comments of one criminal jurisdiction youth part judge who calls himself a "child-saver," stating that his goal is to "save as many children as possible."

This sentiment is shared in varying degrees by court actors in both criminal jurisdiction courts and each professional role. Though most criminal jurisdiction court actors do not phrase their goals as "rehabilitative" or "treatment-oriented", they offer the goal of reduced punishment for youth relative to the punitive sentences given to adults:

> The punishment is not as severe and for a crime that an adult commits I give a fourteen-year-old probation and I wouldn't dream of giving a twenty-two-year-old or twenty-five-year-old probation for the same crime…(#16 – judge)
>
> [Adolescents] should be held accountable for adult activity but I don't think the consequences should be the same. (#17 – prosecutor)

Thus, I find that the criminal jurisdiction workgroups actually pursue a juvenile justice model of rehabilitative treatment – or at least reduced punishment relative to the punitive sentences given to older offenders – relative to a criminal justice model of punitive sanctioning goals that one would anticipate based on the prior literature.

This raises an interesting question: if criminal jurisdiction courtroom workgroups pursue rehabilitative sentencing goals, why is punishment more severe in the criminal jurisdiction? As I show in this chapter, adolescents prosecuted in the criminal jurisdiction are significantly more likely to be incarcerated, controlling for offense and offender characteristics.

According to criminal jurisdiction judges, this disparity in punishment severity largely is a result of the sentencing options available to them. Criminal jurisdiction court actors claim to be hampered by a lack of sentencing options, relative to the sentencing options of juvenile jurisdiction courts. These court actors discussed with me the disparity between non-custodial options in the juvenile and criminal jurisdictions. The criminal jurisdictions do not have as many liaisons with treatment agencies or professionals as do juvenile jurisdictions, nor do they have as many treatment-oriented dispositions available to them. According to one criminal jurisdiction judge:

> Family courts and juvenile courts have more options [than the criminal jurisdiction]. They have more options to provide help in a number of ways, plus when the court's goal is not punishment, but rather rehabilitation, you can expedite cases. …Some kids that you would like to – some of these kids need what's called a structured setting, which is a euphemism for 'well they can't be on probation at home, because that's not a structured setting'. It means there's not enough structure in the family of this child, even coupled with a supervising probation officer to provide an appropriate place to supervise the kid. So then a structured setting to a family court judge could mean places that are short of jail, that provide all sorts of services that are not, you know, a jail. For me there is no such place. I have – there is nothing intermediate to me. … There is no state [treatment] facility [short of prison] where I can mandate the kid. A family court judge does have facilities where the judge says I'm mandating that someone take this kid. … The state doesn't have these intermediate things for these juveniles that we choose to treat as adults. (#16)

The relative lack of intermediate sentencing options is a severe constraint on the criminal jurisdiction judges' decision-making (see Morris and Tonry 1990). The

judges attempt to overcome this constraint by inviting external sponsoring agencies into court during the sentencing stage of case processing, but they report that this is insufficient to match their rehabilitative sentencing goals.

Thus, I find that New York criminal jurisdiction court actors pursue a juvenile justice model of rehabilitative sentencing goals (or at least a goal of reduced punishments), though they are constrained in their ability to enact this model. New Jersey juvenile jurisdiction court actors also pursue a juvenile justice model of rehabilitative sentencing goals, and they face fewer constraints in enacting these goals.

Scaled Responses of Sanctioning Goals

To examine further the sanctioning goals of courtroom workgroups in each jurisdiction type, I collected surveys from each interview respondent (see chapter two) that inquire about what sentencing goals or ideas *should* influence sentencing of adolescents, in their opinions. In table 6.8 I report the mean responses to survey questions asking respondents to evaluate how important sentencing goals or ideas should be. The numbers in table 6.8 are the average responses to scaled questions of how valuable each sanctioning goal should be on a scale of one to four, with one being not important at all and four being very important. The respondents rated each goal independently, rather than ranking the goals relative to one another.

Table 6.8 illustrates that New Jersey juvenile jurisdiction court actors value several goals in near equal proportions. New Jersey juvenile jurisdiction decision-

makers express ideas that correspond to the statutory mandate governing the jurisdiction's sentencing criteria – an equal emphasis on both a defendant's future welfare and crime control. The only goals not rated as important by New Jersey juvenile jurisdiction court actors are just deserts, retribution and (other than prosecutors) maintaining moral order by establishing right from wrong.

Contrary to the expectation that criminal jurisdiction court actors will hold more punitive goals, the New York criminal jurisdiction survey respondents offer similar accounts as the New Jersey juvenile jurisdiction respondents of the sentencing criteria that should be prioritized. Mirroring the survey results from the New Jersey juvenile jurisdiction respondents, I find that the New York criminal jurisdiction respondents rate almost all of the goal options as important (table 6.8). The only exceptions to this are retribution, and making an example of the offender as a general deterrent.

Hence, overall, it seems that both New Jersey juvenile jurisdiction actors and New York criminal jurisdictions actors follow goals of both punishment and rehabilitation when sentencing adolescents. This result suggests that with regard to sanctioning goals, a juvenile justice model is pursued in both jurisdiction types, rather than different models of justice across jurisdiction types.

Table 6.8. Survey Responses to Factors That Should be Considered

	Juvenile Jurisdiction Mean Responses			Criminal Jurisdiction Mean Responses		
	Judges	Defense Attorneys	Prosecu-tors	Judges	Defense Attorneys	Prosecu-tors
1. Offenders' Needs						
Treatment / Rehabilitation …	4.0	3.9	3.5	4.0	4.0	3.0
Recognizing Emotional or Other Needs of Offender..	3.0	3.7	3.0	2.5	3.4	2.4
2. Crime Prevention						
Preventing the Individual from Committing Future Crime ……	3.0	3.4	3.8	4.0	3.3	4.0
Making an Example of the Offender in Order to Prevent Crime in General …	3.0	1.9	3.3	1.5	1.1	2.0
Protecting the Community …	4.0	3.4	3.5	4.0	2.4	3.8
3. Punishment & Justice						
Retribution - "An eye for an eye" …	1.0	1.1	1.5	1.0	1.0	1.4
Just Deserts - Providing the most appropriate legal punishment to fit the crime ..	2.0	2.3	3.3	3.0	1.9	2.8
Finding a Morally Fitting Punishment	1.0	1.4	3.0	3.5	2.0	3.2
4. Due Process						
Fairness and Equal Justice for all Defendants …..	4.0	4.0	3.8	4.0	3.4	4.0
Protecting the Legal Rights of the Offender ...	4.0	3.7	3.3	3.0	3.9	3.2
5. Victims / Moral Order						
Looking After the Rights and Needs of the Victims …	4.0	2.7	3.5	3.5	2.1	3.6
Maintaining Moral Order by Establishing Right and Wrong Behavior	1.0	1.6	3.0	3.0	1.9	2.8

Conclusion

In this chapter, I test whether juvenile and criminal jurisdictions fit the last of three dimensions distinguishing between a juvenile justice model and a criminal justice model: punishment. With regard to punishment severity, I find that adolescents prosecuted in the New York criminal jurisdiction are much more likely to be detained pretrial, given any court action (analogous to convicted), and sentenced to incarceration than adolescents in the New Jersey juvenile jurisdiction. And, among adolescents who are incarcerated, those in the criminal jurisdiction receive much longer sentences than those in the juvenile jurisdiction. These results are clear from both descriptive comparisons and (for likelihood of incarceration) multivariate analyses controlling for offense and offender characteristics. They clearly show that with regard to punishment severity, criminal jurisdictions reflect a criminal justice model of relatively severe punishments and juvenile jurisdictions reflect a juvenile justice model with relatively less severe punishments.

In this chapter I also analyze the effect of jurisdiction type on sanctioning goals. Although the criminal and juvenile jurisdictions follow disparate statutory goals – with the New York criminal jurisdiction statutes suggesting sanctioning goals of retribution and incapacitation, and the New Jersey juvenile jurisdiction statutes suggesting goals of rehabilitation and community protection – I find that the individual court actors in both jurisdiction types hold similar sentencing goals. That

is, courtroom actors in both the juvenile jurisdiction and the criminal jurisdiction pursue a juvenile justice model of sanctioning goals by seeking to rehabilitate youth, or at least to offer reduced sentences relative to those given to older offenders.

This result is surprising, given the robust effect of jurisdiction type on sentencing, with much more severe punishments in the New York criminal jurisdiction. I find that the mismatch between the sanctioning goals of court actors within the criminal jurisdiction (holding a juvenile justice model of rehabilitative sanctioning goals) and the actual punishments prescribed by the criminal jurisdiction (a criminal justice model of severe punishments) is a result of the constrained sentencing options within the criminal jurisdiction.

Finally, when considering the effect of court context on punishment severity, my results mirror those of the previous chapters. That is, I find that court context plays very little role in determining punishment severity. Though the percentages of adolescents detained pretrial and given any court action fluctuate between courts within both the New Jersey juvenile jurisdiction and the New York criminal jurisdiction, there is no significant relationship between court context and likelihood of incarceration. Thus, again my results fail to support prior research on the important effect of local legal culture of individual court communities (eg. Dixon 1995; Eisenstein et al. 1988).

CONCLUSION

In this dissertation I compare the prosecution and punishment of adolescents in the New Jersey juvenile jurisdiction and the New York criminal jurisdiction. To determine whether criminal or juvenile justice is pursued when adolescents are prosecuted and punished in the juvenile and criminal jurisdictions, I analyze quantitative and qualitative data on the process and outcomes of cases in these two jurisdiction types. The lower threshold for criminal jurisdiction prosecution in New York than in New Jersey allows me to compare cases of defendants with similar arrest charges and of similar ages across the two jurisdiction types, and across county-level courts within the New York criminal jurisdiction and within the New Jersey juvenile jurisdiction. More specifically, I analyze quantitative and qualitative data to determine if the prosecution and punishment of adolescents reflect a criminal justice model or a juvenile justice model in the criminal and juvenile jurisdictions, along three dimensions: formality of case processing, evaluation of adolescents, and punishment.

Prior research suggests and political rhetoric assumes that relative to one another, juvenile and criminal jurisdictions differ significantly along these three dimensions, corresponding to the distinction between a juvenile justice model and a criminal justice model. According to a juvenile justice model, juvenile jurisdiction case processing is less formal than criminal jurisdiction case processing, evaluation of adolescents in the juvenile jurisdiction focuses on characteristics of offenders rather

than only characteristics of offenses, and punishment is less severe and more focused on rehabilitation than in the criminal jurisdiction. In contrast, according to a criminal justice model, criminal jurisdiction case processing is formal, evaluations are based on characteristics of offenses, and punishments are relatively more severe and more focused on retribution or incapacitation.

I find that the prosecution and punishment of adolescents in the New Jersey juvenile jurisdiction fits the juvenile justice model. Case processing indeed is informal, decision-makers evaluate adolescents with both offender and offense characteristics in mind, and sentencing proceeds through rehabilitative goals and is relatively lenient. These conclusions hold true for both stages of case processing – prior to sentencing and during the sentencing stage – as well as for both courts within the New Jersey juvenile jurisdiction. Hence I conclude that the juvenile jurisdiction does reflect a juvenile justice model.

Despite the neat fit of data to the theoretical model in the juvenile jurisdiction, the prosecution and punishment of adolescents in the New York criminal jurisdiction is more complex because it fits neither a criminal justice model nor a juvenile justice model throughout case processing. I find that during the early stage of case processing, the New York criminal jurisdiction reflects a criminal justice model. Case processing during this stage is formal and evaluations are based on offenses rather than offenders. Yet once the sentencing stage of case processing begins, a juvenile justice model better describes proceedings in the New York criminal jurisdiction.

Case processing is less formal during sentencing, as the courtroom workgroup expands to include external treatment professionals, the language and courtroom interaction are less formal and adversarial, and defendants participate in hearings. The evaluation of offenders during sentencing focuses on characteristics of offenders, rather than only their offenses. And, I find that New York criminal jurisdiction courtroom workgroup members apply rehabilitative sentencing goals to the punishment of adolescents. Hence, when considering formality of case processing, evaluation of adolescents, and sanctioning goals, the New York criminal jurisdiction reflects a juvenile justice model during sentencing.

However, the actual punishments given to adolescents in the New York criminal jurisdiction are significantly more severe than the punishments for adolescents in the New Jersey juvenile jurisdiction. Although the case processing and behaviors of court actors during the sentencing stage in the New York criminal jurisdiction reflect a juvenile justice model regarding every other dimension I examine (formality, evaluation, and sentencing goals), defendants are more likely to be convicted, more likely to be incarcerated, and if incarcerated, they receive much longer prison terms than in the New Jersey juvenile jurisdiction. As I describe in chapter six, criminal jurisdiction courtroom workgroup members claim to be constrained in their non-custodial sentencing options. This constraint, in conjunction with the statutorily framed goal of punitive treatment in the criminal jurisdiction,

largely is responsible for these relatively greater penalties despite a juvenile justice model regarding formality and evaluation during the sentencing stage.

Hence, I conclude that the criminal jurisdiction approximates a criminal justice model during the early stage of case processing, and a juvenile justice model during the late stage of case processing for all dimensions other than punishment severity (formality, evaluation, and sentencing goals). Because the criminal jurisdiction reflects a hybrid form of justice that incorporates elements of both juvenile and criminal justice at different stages of case processing, I call this a *sequential model of justice*. However, despite the similarity during the sentencing stage of this sequential model of justice in the criminal jurisdiction and the juvenile justice model in the juvenile jurisdiction, the severity of punishments are very different across jurisdiction type. This distinction in punishment severity, with more severe punishments in the criminal jurisdiction than the juvenile jurisdiction, supports the hypothesized distinction between juvenile and criminal justice.

Court Context and Organizational Filtering

In contrast to prior research (eg. Eisenstein et al. 1988; Flemming et al. 1992; Nardulli et al. 1988; Ulmer 1997), I find very few differences between individual courts within the New Jersey juvenile jurisdiction and within the New York criminal jurisdiction. The county-level courts within each jurisdiction type are very similar to one another regarding formality of case processing, evaluation of adolescents, and

sanctioning goals and punishment severity. Hence, my research fails to support the argument that local court contexts and particular modes of interaction among individual courtroom workgroups shape case processing and punishment. Instead, I find that the jurisdictional differences between the juvenile and criminal forums are far greater than local court differences.

By finding relatively minor differences among county-level courts, my findings contradict previous studies on court contexts. Yet this may be a product of my research site selection. As I discuss in chapter two, I compare six counties that are adjacent to one another, and that comprise a unitary metropolitan area. The New Jersey and New York City counties in my study all have similar economic, demographic, political and criminal justice system characteristics. By holding these broader factors constant, I am able to assess the impact of distinctions due to being a juvenile jurisdiction or a criminal jurisdiction. As a result, I make different types of comparisons than previous studies on court context, most of which compare jurisdictions with varying social characteristics. Jeffery Ulmer, for example, compares counties he renames "Metro", "Rich" and "Southwest", which vary significantly among economic, demographic and political dimensions (1997). If my research compared counties that varied along these dimensions, it is likely that I would find greater county differences as well. Furthermore, it is important to note that the prior literature on local court contexts considers cases of adults, not adolescents. The distinctions between my results and those of prior research may be a result of looking

specifically at adolescent offenders' cases. It is possible, for example, that concerns of youthfulness and reduced culpability that guide case processing across courts prosecuting adolescents in both jurisdictions might mask contextual distinctions that arise during cases of older defendants.

Despite the fact that my results contradict the literature on local court contexts, the insights informing this body of literature help explain my results comparing jurisdiction types. Much of this body of research demonstrates how courtroom workgroups "filter" externally imposed policies such as sentencing guidelines by enacting these policies in ways that help them meet organizational imperatives (eg. Dixon 1995; Engen and Steen 2000; Ulmer and Kramer 1996; 1998) or broader structural and cultural scripts (Savelsberg 1992). For example, in his analysis of sentencing guidelines in the U.S. federal courts and in Minnesota, Joachim Savelsberg (1992) demonstrates that broad structural and cultural forces impede efforts to formalize sentencing through neoclassical sentencing guidelines. He finds that formal rational sentencing guidelines (see Weber 1968) do not "fit society" because they clash with the substantively rational norms guiding courtroom workgroups' decision-making as well as with the organizational characteristics of courts (Savelsberg 1992).

This insight explains why I find a sequential justice model in the New York criminal jurisdiction. During the early stage of case processing, New York criminal jurisdiction courtroom workgroups satisfy their obligation to follow legally prescribed due process procedures, and to protect defendants through adversarial proceedings.

Yet during sentencing, the criminal jurisdiction courtroom workgroups filter case processing by implementing their conceptions of adolescence and reduced culpability for youth relative to adults.

According to the New York criminal jurisdiction court actors I study through observation and interviews, they follow a less formal model of case processing, consider characteristics of offenders, and pursue rehabilitative goals during sentencing because of their beliefs of reduced maturity and culpability among adolescents. For example, according to one of the New York youth part judges, adolescent defendants are sent to external treatment programs during the sentencing stage because this practice provides information about individual defendants that can be used to help them. In his words, this relatively informal sentencing process "Gives me room to do what's appropriate."

Recall that each criminal jurisdiction courtroom workgroup member expresses the belief that adolescents are less mature than adults, less able to make decisions about whether to commit crimes, and should be punished less severely than adults. One judge actually calls himself a "child-saver." To enact these beliefs during case processing, the courtroom workgroups discuss characteristics of offenders, include external treatment providers and defendants in hearings, and attempt to rehabilitate defendants during the sentencing stage.

Hence the reproduction of a juvenile justice model during the sentencing stage of criminal jurisdiction case processing is a result of courtroom workgroups filtering

case processing through their beliefs about reduced culpability among adolescents. These beliefs are reminiscent of the doctrine of *parens patriae* that guided the creation of the initial juvenile justice system. Thus, despite the rapid proliferation of laws over the past three decades mandating the criminal jurisdiction prosecution of adolescents (Feld 1999; Snyder and Sickmund 1999), it seems that "child-saving" is still alive when adolescents are prosecuted in the criminal jurisdiction. Such a filtering process is not necessary in the New Jersey juvenile jurisdiction, because statutory goals and procedures allow courtroom workgroup members to acknowledge and to follow their beliefs of reduced culpability for youth throughout each stage of case processing.

Implications

Understandings of Juvenile and Criminal Justice

My findings have significant implications for understanding both the organization of criminal and juvenile jurisdictions, and the impact of prosecuting and punishing adolescents in the criminal jurisdiction. The results of my research challenge an often repeated but rarely examined hypothesis that adolescents transferred to the criminal jurisdiction are subjected to a criminal model of justice. I show that there are greater similarities between the two jurisdiction types than previously considered, and that the veracity of these previous hypotheses depends on the stage of case processing; during the early stage of case processing, the two jurisdictions indeed practice distinct models of justice, yet they converge somewhat

during the sentencing stage. Thus, the categorizations often applied by academics and policy-makers to the contrast between juvenile and criminal jurisdictions may be misleading.

My results add to an emerging picture of contemporary punishment regimes as described by other scholars. For example, in describing the "Culture of Control," Garland (2001) illustrates how a new penal regime has displaced previous ways of thinking and acting about punishing offenders; one result of this is the condition of mass incarceration. Here, I show how one particular policy (transfer to the criminal jurisdiction) within a broader culture of control has an effect that is both similar and different than the punitive regime described by Garland (2001). That is, despite increased levels of punishment resulting from jurisdictional transfer, transfer to the criminal jurisdiction does not subject adolescents to a vastly different model of justice than in the juvenile jurisdiction when considering other dimensions of juvenile and criminal justice. Hence, my results add to current research and theory by describing the effect of this punitive regime on the prosecution and punishment of a particular group of offenders: adolescents.

Furthermore, this project adds to the organizational literature on courts and court contexts. My results suggest that by examining counties in which courts are situated in very different social, political and economic contexts, previous studies may exaggerate the dissimilarities between most local legal cultures. When comparing courts with similar social characteristics, I find similarity among attitudes, patterns of

interaction and other local legal cultural factors. Thus, prior research may tend to focus too little on shared beliefs among court actors across court contexts, especially when considering cases of adolescent defendants.

Persistence of Child-Saving

My findings are important for understanding adolescence as a social category as well. I show that despite laws mandating the criminal jurisdiction prosecution of adolescents, court actors still process, evaluate and punish these adolescents with their youthfulness and reduced culpability in mind. I find that the same idea of child-saving that gave birth to the initial juvenile justice system has survived jurisdictional transfer, and still exists when adolescents are prosecuted in an adult forum.

Considering this surprising result on a larger societal level, it contradicts recent thoughts about the conceptual boundaries of childhood and adolescence. Some suggest that the social category of childhood is disappearing, due to increased accessibility to information through television and the internet (Postman 1982; see also Applebome 1998; Elkind 1981). And, following several high profile murders by youth between the ages of 11 and 14 – Nathaniel Brazill, Lionel Tate, and Alex and Derek King – others have argued that these horrible murders suggest the erosion of

immaturity and reduced culpability among youth[46] (see Butts and Harrell 1998; Canedy 2002; Ghetti and Redlich 2001; Patchett 2002).

Though I do not address directly broad social conceptions of adolescence and its boundaries, my results speak to how these conceptions are reflected by the court actors responsible for judging delinquents. My results contradict these prior arguments (eg. Applebome 1998; Elkind 1981; Postman 1982) by finding that criminal jurisdiction courtroom workgroup members rely largely on a late 19th century notion of *parens patriae* when sentencing adolescents. Thus, rather than finding that adolescents are no longer treated as juveniles, I find that reduced culpability among youth is an important consideration in both juvenile and criminal jurisdictions. Regardless of the legal jurisdiction in which adolescents are prosecuted and punished, they are still treated to some extent as adolescents rather than as adults.

Peculiarity of Adolescent Cases

One of the central findings in this dissertation is that adolescents prosecuted in the criminal jurisdiction receive sequential justice rather than either criminal justice or juvenile justice. This result begs the question of whether sequential justice is a product of prosecuting adolescents, or if it is simply a feature of criminal jurisdiction case processing for all defendants. That is, it is possible that adult defendants as well

[46] Allison James and Chris Jencks (1996) consider a similar offense in Britain, the murder of Jamie Bulger in 1993, and how it led to similar shifts in popular conceptions of childhood.

are prosecuted in a formal environment in which only offense severity is considered during early stages of case processing, yet during sentencing the court operates with a less formal style, considers characteristics of offenders as mitigating evidence, and pursues a rehabilitative sentencing goal.

Because I only study cases of adolescents, I am unable to answer this question with empirical evidence. However, the "child-saving" orientation of criminal jurisdiction court actors that I discover suggests that the case processing of adolescents is somewhat different than that of adults. The criminal jurisdiction decision-makers I study cite adolescents' immaturity and reduced culpability as their reason for evaluating characteristics of individual offenders and trying to offer rehabilitative sentences. Their statements suggest that they consider adolescents to be different than adults, less mature, less culpable for their crimes, and deserving of a different style of justice than adults. Their actual behaviors bear this out as well, based on my court observations. Thus, even if case processing of adult defendants in the criminal jurisdiction is bifurcated into two distinct stages, the characteristics of these stages are likely to be different than the characteristics of case processing for adolescents. This, however, is an empirical question that requires data on processes and outcomes of adult defendants to answer. It is important for future research to address this question by comparing the two stages of case processing for adult defendants along the dimensions I establish here.

Race and the Prosecution of Adolescents

My findings have implications for current understandings of the effect of race on the process and outcomes of prosecuting adolescents. Though my analysis does not focus directly on the impact of defendants' race on the prosecution and punishment of adolescents, it does imply that a racial screening process occurs prior to adolescents' appearances in court. The limited role of race in my analysis is due to the near total absence of white youth in the New York criminal jurisdiction and the New Jersey juvenile jurisdiction. As the descriptive data in chapter six illustrate, very small proportions of each jurisdiction type's caseload are white adolescents. During my eighteen months of court observations, I observed only three cases of white adolescents across both jurisdiction types. The small numbers of white adolescents hamper comparisons between the treatment of whites and minority adolescents, yet this lack of diversity among the populations of defendants itself suggests that race might have a significant impact on prior decision-making junctures (i.e. arrest and case filing).

Prior research has shown that minorities fare worse in courts than whites, especially when decision-makers have discretion to consider blameworthiness (eg. Bridges and Steen 1998; see also Sampson and Laub 1993 for a discussion of racial effects in different social contexts). The vast over-representation of minorities in the New Jersey juvenile jurisdiction and the New York criminal jurisdiction certainly suggests a racial filtering process occurring prior to court prosecution, but I am unable

to test this possible result with my data. Of course, it is possible that few whites commit these crimes, and that the rarity of their appearance in court is representative of their offending rates. Yet this would contradict previous evidence concerning racial screening of juveniles (Bishop and Frazier 1988; Leiber and Jamieson 1995; Leiber and Stairs 1999; Sealock and Simpson 1998), as well as self-reported offending rates (Huizinga and Elliott 1987).

Despite the lack of racial diversity among adolescent defendants in the courts I study, I am able to comment on the courtroom workgroups members' ideas about racial over-representation. During my interviews, I ask all court actors why they thought there were so many more minority adolescents than white adolescents in court. To my surprise, I received only three different responses to this question. In order of how often each response is offered, they are: demographics, a higher rate of crime among minorities due to social conditions, and a racial filtering process by the police. Some respondents offer more than one explanation, others offer only one.

The demographic view of minority over-representation – the most commonly stated view – is that there are so many more minorities in court than whites because the areas presided over by the courts are home to more minorities than whites. In truth, according to the 2000 Census the New York counties' populations are 29.9% (Brady County) and 41.2% (Brown County) white, and the New Jersey counties' populations are 44.5% (Pierce County) and 55.6% (Walker County) white. These numbers illustrate that the urban counties in which the courts are situated do contain

large proportions of racial and ethnic minorities, but these percentages are nowhere near the racial composition of the courts' defendants. In the data I analyze in chapter six, 86.7% of the New Jersey cases are racial minorities, and 95.0% of the New York cases. Therefore, this demographic explanation can hardly account for the full extent of the racial disproportion.

The second explanation is of a racial filtering process, which is precisely what prior research would lead one to expect as an answer to the problem of racial over-representation (see Bishop and Frazier 1988; Dannefer and Schutt 1982). According to one prosecutor, this occurs on a geographic basis, with police in the suburban areas of the county (in which more white adolescents live than minorities) handling cases informally rather than through official arrest:

> Interviewer: Why do you think there are more minority adolescents coming before the court than white adolescents?
> Prosecutor: Because the police departments selectively enforce the laws. I've been told that by police officers. That they have been told in these certain towns to look the other way, to take the kids who are caught doing drugs home to their parents with a stern warning, to refer the kids to [diversionary program]….
> … Then I have other cops in another small town, a very nice town, that because they want New Yorkers to come and live in these suburbs and bedroom communities of New York, they don't want to move into a place where the kids….where there are gangs. … There are Bloods and Crips here but they don't want to move to that. You can't sell them houses if they know they are going to move to that. You can sell them houses if they don't know about that. ...
> Interviewer: So they divert them?
> Prosecutor: They give them a stern talking to, they send them home with a warning or they take them home. They call their parents to the police department but they never spend the night in

> jail. They really have to screw up to spend a night in youth house. (#15)

The third explanation given for minority over-representation is that minorities commit more crimes than whites. When respondents offer this explanation, they do so by couching it in social structural terms. They state that because of poverty and other negative living conditions (eg. environmental influences, lack of employment opportunities), minorities are more likely to engage in crime than relatively more advantaged whites:

> I think the social conditions are just ripe for producing criminal activity. I think that a lot of these kids don't have hope for themselves or their community for the future. They don't see how they figure in the grand scheme of things. I'm just speculating. They don't see how they can. I think that for some reason drugs seem to find their way disproportionately to these communities and that in turn promotes further criminal activity. Guns seem to find their way disproportionately to these communities and that promotes further criminal activity. I don't think the images that these kids are exposed to through music videos and movies, which they are the target audiences, help the situation at all. Much of the violence you see in these movies and videos glorify the conduct that land these kids into the youth house, the court and ultimately in [the State Training School]. (#14)

Among the thirty-two interviews I conducted, there are no evident divisions along professional position or jurisdiction concerning how respondents explained this over-representation. Defense attorneys, prosecutors and judges give fairly similar answers as one another to the question of minority over-representation, as do juvenile jurisdiction and criminal jurisdiction actors. These responses illustrate the courtroom

workgroup members' belief that the prosecution and punishment of adolescents in juvenile and criminal jurisdictions are not influenced by race. Even those interview respondents who acknowledge the influence of race on the justice process attribute this influence to case screening by police, prior to court involvement. It is important for future research to address this topic of racial disproportionality, and whether the respondents are correct in denying that racial considerations influence the practice of criminal and juvenile jurisdiction case processing.

Gender and the Prosecution of Adolescents

In addition to race, my findings have important implications for understanding the impact of gender on the processes and outcomes of prosecuting adolescents. Due to the small numbers of females prosecuted in the jurisdictions I study (see chapter six), it is difficult for me to make conclusions about the effect of gender. However, the fact that defendants' families participate in juvenile jurisdiction hearings begs the question of whether a familial style of justice – in which parental roles are enforced – might be exerted differently on males and females (eg. Chesney-Lind 1977). Furthermore, the large discretion and broad range of evaluative criteria utilized in both jurisdictions during sentencing might result in a significant influence of gender-based stereotypes. As a result, further research needs to collect more data specifically on cases of female adolescent defendants to consider whether my results apply to males and females equally.

Despite my inability to compare the actual effect of gender across the New York criminal jurisdiction and the New Jersey juvenile jurisdiction, I am able to comment on the courtroom workgroup members' perceptions of how gender relates to case processing. During my interviews, I asked each respondent whether boys and girls who commit similar crimes should be dealt with similarly or differently. All respondents answered that sex should not be a factor in determining court treatment. However, many also stated that although sex should not have an independent effect, it often does. Respondents suggested that girls have a potential advantage over boys with regard to court dispositions. Girls who care for children may be more likely to receive discounted sentences than either boys or girls without children. Whether or not a defendant cares for a child is a factor often discussed off-the-record during bench conferences, and may influence the decision to incarcerate; recall that when estimating the likelihood of incarceration in my quantitative analyses using the full sample, I find that females are significantly less likely to be incarcerated (see chapter six, table 6.5). According to one criminal jurisdiction prosecutor:

> Interviewer: Do you think males and females who commit similar crimes should be dealt with similarly?
> Prosecutor: Yes, and it really annoys me that if there is an unfairness in the criminal justice system, it's not necessarily racial, it's gender. I think that girls get, particularly in front of male judges, more lenient treatment. … I think they tend to be more lenient. They feel sorry for them. "Look at her, my God, she's pregnant." These are the kinds of comments they make so it's very obvious. Particularly for the male judges, that they have a difficulty and it may be because they don't see enough. (#17)

According to one juvenile jurisdiction defense attorney as well, "The girls will always get a better break." Thus, gender may influence decision-making, with girls – especially girls who are pregnant or care for children – receiving a discount in both jurisdictions. Further research should consider this possibility by comparing greater numbers of cases involving females across juvenile and criminal jurisdictions.

Additionally, in my interviews I also asked respondents whether there are any significant differences between the boys and girls who appear before the court. A majority of respondents answered that the girls tend to be more violent and less compliant with court sanctions than the boys:

> …Girls have a tendency to…and somebody said this to me when I was first down there and I thought that was sort of a sexist thing to say but it seems as though the girls tend…have a tendency to getting involved in more of a minimal sort of offense and then having problems dealing with the resolution of that. That is to say, they will get picked up or have a fight or some kind of marijuana or something minimal like that but then they just won't do what they are supposed to after. They won't listen. There will be problems at home. There is a very tense relationship between mother and daughter. Daughter is going out at all hours and not listening at home and grades are bad and hanging around with the wrong people or what the parent perceives to be the wrong people. And this is what someone told me when I first came down here. Girls are the worst clients to deal with. (#26)

> Quite honestly, I find the girls to be more…I don't know what the word is. I don't want to say "vicious" but the girls just take things more personally and attack one another. We have a lot of girls with the slashings. If you sit in court and you see….you don't have girls necessarily committing robberies or burglaries for the most part. The girls are committing assaults and they are usually on girls that they know and they're usually over boys. … They don't slash the boy, they slash each other, because they are both

> pregnant by the same guy, which is very interesting that is occurring at this time in our society. So there's a viciousness there. And a vindictiveness that you don't necessarily see with the males. (#17)

Comments similar to these were offered by several of the respondents, both male and female, and in both jurisdictions.

It is possible that, instead of female defendants actually being more violent overall, respondents assume that the females who are violent represent the norm rather than the exception; this could occur if they find violent females more shocking than violent males, thus these cases are more noticeable. Alternatively, the respondents may be correct and the few females in court may actually be more violent, overall, than the males in court. This possibility could be the result of pre-trial screening mechanisms diverting most non-violent cases of females away from court, or because of the violent tendencies among girls noted by the respondents in the above passages. Again, to examine this more thoroughly, one would need to observe a larger number of cases with female defendants, and a wider range of offenses.

Juvenile Justice Policy

In this dissertation, I challenge taken-for-granted assumptions of policy-makers about the distinctions between juvenile and criminal jurisdictions that prosecute and punish adolescents. Challenging the conventional wisdom about the relative

differences between these two jurisdictions is important for informing juvenile justice policy. As Franklin Zimring (2000:208) notes:

> The design of sensible provision for transfer depends on clearly understanding the functions and limits of juvenile and criminal courts, and the differences between these two institutions. Finding the appropriate methods of transfer from juvenile to criminal courts thus demands that we comprehend the entire context in which such decisions must be made.

By showing that the distinctions between these two legal forums are less than political rhetoric and prior research assume, I am not suggesting that both are equally suitable forums for prosecuting adolescents. Rather, based on my results I have no reason to disagree with the body of prior research that measures the effects on crime rates of jurisdictional transfer. This body of research, which includes a variety of studies using different methodologies, unanimously concludes that adolescents punished in the criminal jurisdiction are more likely to be rearrested than similar adolescents punished in the juvenile jurisdiction (Bishop et al. 1996; Fagan 1991; 1996; Myers 2001; Winner et al. 1997). In addition to this lack of specific deterrence, research finds that jurisdiction transfer laws have no general deterrent effect following their implementation (Jensen and Metsger 1994; Singer 1996; Singer and MacDowall 1988). Given my finding that despite the convergence during the sentencing stage of many characteristics of juvenile and criminal jurisdiction case processing, the criminal jurisdiction provides more severe punishments, it is therefore likely that prosecution in this criminal jurisdiction will increase defendants' likelihood of rearrest rather than

decrease it, relative to the juvenile jurisdiction. If anything, my results strengthen appeals to maintain most adolescent offenders in the juvenile jurisdiction rather than prosecuting and punishing them in the criminal jurisdiction (see Zimring 1998).

Generalizability

The extent to which my results are generalizable, or true in other states that prosecute adolescents in juvenile jurisdictions and in criminal jurisdictions, remains to be tested by further research. It is likely that the results are in fact generalizable, because the factors that shape the similarities and differences between the New Jersey juvenile jurisdiction and the New York criminal jurisdictions are likely to be found in other jurisdictions as well.

The method of transfer to the criminal jurisdiction that I examine here is perhaps the most rapidly proliferating method nationally, as other states recently have enacted transfer provisions that resemble New York's 1978 Juvenile Offender Law. Greater numbers of states have both recently lowered their jurisdictional boundaries between juvenile and criminal jurisdictions and excluded greater numbers of offenders from the juvenile jurisdiction by statutory exclusion (Feld 1998; 2000). In addition, the sentencing scheme in the New York criminal jurisdiction – fixed sentencing with room for judicial discretion (by giving Youthful Offender status) – is similar to that of criminal jurisdictions in many other states (see Savelsberg 1992) and increasingly

common with regard to the criminal jurisdiction prosecution of adolescents (Feld 1998). Because New York's method of prosecuting adolescents in the criminal jurisdiction demonstrates increasingly common characteristics of states' efforts to criminalize delinquency, there is ample cause to think that my results concerning the criminal jurisdiction may be generalizable to other locations as well.

Furthermore, my results from the New Jersey juvenile jurisdiction are likely to resemble results of juvenile jurisdictions in other locations as well. By retaining most adolescents rather than transferring them to the criminal jurisdiction, and by maintaining a dual statutory purpose emphasizing both treatment and punishment, the New Jersey juvenile jurisdiction has maintained a traditional juvenile justice system. The New Jersey juvenile jurisdiction is therefore a good example of "juvenile justice" as referred to by scholars and policy-makers, and serves as an excellent comparison to the criminal jurisdiction prosecution of adolescents.

Moreover, many of the similarities I find across the two jurisdiction types are likely to be found in other jurisdictions. My results show that these similarities – especially the similar model of justice during the sentencing stage – primarily are the result of common perceptions of youth as less culpable for crime than adults, regardless of jurisdiction type. Criminal jurisdiction judges, prosecutors and defense attorneys subscribe to notions about juveniles and juvenile delinquency that are similar to some of the ideas that provoked the creation of the juvenile justice system. Given the resilience of this belief in reduced culpability of adolescents, one might expect this

culturally rooted idea to cause a strain for other criminal jurisdiction court communities prosecuting adolescents as well.

To test the generalizability of my results, future research needs to include a greater number of jurisdictions and study the prosecution of adolescents across criminal and juvenile jurisdictions using the dimensions I establish in this project. Future research needs to test these results in courts that vary by both statutory and social contexts (eg. courts in rural areas, courts without discretion in sentencing, or courts that mix adolescents with a general adult caseload), to examine the impact of local legal culture across different contexts.

In particular, it is important for future research to evaluate the impact on case processing of the individual judges who preside over adolescent offenders' cases (see Bortner 1982; Gibson 1978; Hagan 1975; Hogarth 1971). As the data demonstrate, judges in both jurisdiction types exercise a significant amount of discretion, especially during the sentencing phase of case processing. It is during this phase that the criminal jurisdiction judges depart from a criminal justice model of case processing to put in motion the juvenile justice practices that correspond to their attitudes and beliefs.

Directions for Future Research

The results of my research provide a more nuanced analysis than current studies comparing juvenile and criminal jurisdictions. Future research can expand on this study by incorporating my findings and using the analytic dimensions of juvenile and criminal justice models that I test. First, as mentioned above, it is important to study a greater number of courts, especially courts in varying social contexts. By adding greater variation of court context, further research could better evaluate the importance of local legal culture. Though I do not find that different court contexts bring about significant distinctions among courts within each jurisdiction, this could be a result of looking specifically at cases of adolescents. Further research that considers cases of both adults and adolescents could test the possibility that local legal culture matters more for cases of adults than cases of adolescent defendants.

Second, future researchers need to speak to a greater number of courtroom decision-makers (Mears 2000). Surveys sent to large numbers of people, assessing their views of childhood culpability and whether adolescents are fully responsible for their criminal behaviors, would be very helpful. These surveys could be sent to non-court actors as well, to compare the attitudes of courtroom workgroup members to widely held conceptions of childhood and culpability. The results I find here – of criminal jurisdiction courtroom workgroup members holding juvenile justice conceptions of adolescents' maturity and culpability – can guide further analysis into perceptions of culpability.

Third, it is important for researchers to study a greater number of decision-making points, using the dimensions I utilize. Future research could compare the models of justice reflected by criminal and juvenile jurisdictions regarding level of formality and evaluation of other decision-making junctures, such as arrest or case filing. The decision to arrest and the process of screening cases for prosecution are particularly important, as they establish the pool of cases that reach courts. As prior research notes, it is likely that racial filtering processes during these early stages of decision-making are responsible for the over-representation of minority youth observed in many courts, including the ones I study (Bishop and Frazier 1988). This finding of discrimination in the prior research might be due to the level of formality or method of evaluating adolescents at different decision-making points, thus my results will be helpful in guiding future research on other stages of case processing.

Fourth, researchers could collect a broader array of data. Others could repeat my quantitative analyses by including data concerning strength of the evidence against the defendant, level of injury that resulted from the offense, the defendant's role in the offense (whether he or she was the leader or a follower), defendant's school status and family characteristics, and plea bargaining. With regard to qualitative comparisons, further research could extend my work by including interviews of defendants and their families, if possible. Though these interviews would not assess the decision-making of court actors, they would add to our understanding of these courts by measuring effects of court actions and the perceptions of the courts' clients.

APPENDIX 1: SUPPLEMENTARY DATA ANALYSIS

Given the gap in time between the quantitative data I analyze in chapter six (cases from 1992-1993 arrests) and the qualitative data I analyze in chapters four, five and six (collected from 2000 to 2002), I perform further analyses with a more recent quantitative dataset. The second dataset also includes fifteen- and sixteen-year-olds charged with aggravated assault ($1^{st°}$ and $2^{nd°}$), robbery ($1^{st°}$ and $2^{nd°}$), or burglary ($1^{st°}$) in the same six counties. Yet these data are more recent than the data in the first dataset I analyze in chapter six – they are from cases disposed of in 1998. In addition, these data are the populations of all eligible cases rather than samples across two years. This more recent dataset contains fewer variables than the 1992-1993 dataset, thus, my analyses using this more recent data are not as rigorous as those using the older data. Their importance is that they permit me to verify that the courts I study produced similar outcomes in the years following 1993, closer to the time during which I collected qualitative data in these courts (2000-2002).

Sample Description – Dataset 2

In Appendix 1.1 I display a comparison of the juvenile jurisdiction and criminal jurisdiction cases in the second dataset. Though missing several variables included in the first dataset, this second dataset is very similar in composition to the first dataset with regard to both offender and case characteristics. The two state sub-

samples here show similar age, sex, and race distributions as in the first dataset. Again, the criminal jurisdiction sub-sample contains more sixteen-year-olds, more males, and more robbery defendants than the juvenile jurisdiction sub-sample. And, again the juvenile jurisdiction cases are more likely to have prior arrests than the criminal jurisdiction cases. Unfortunately, this second dataset does not contain information on pre-adjudication detention, arrests during case processing, previous incarceration and bench warrants.

Appendix 1.1. Offense and Offender Characteristics of Cases in each Jurisdiction

		Juvenile Court/ New Jersey (n=864)	Criminal Court/ New York (n=1577)
		%	%
Offender Characteristics			
Age:	15	44.3	17.9
	16	55.7	82.1
Sex:	Male	82.2	87.9
	Female	17.8	12.1
Race:	White	13.3	5.0
	African-American	60.4	65.8
	Hispanic	23.7	25.5
	Other and Unknown	2.7	3.7
Offense Characteristics			
Offense Type:	Robbery	23.4	81.8
	Aggravated Assault	49.2	7.2
	Burglary	27.4	11.0
Associated Weapon Charge		28.1	32.8
Presence of Prior Arrests		64.6	41.0

Data Sources

The New York Department of Criminal Justice Services and the New Jersey Administrative Office of Courts provided the data in this second dataset. During the

time elapsed between collecting the data in the two datasets, each statewide criminal justice system improved its automated data collection systems. As a result, one agency provided each statewide dataset for the second dataset without any manual data collection.

Punishment Comparison

The primary importance of this second dataset is to verify that no significant changes in court outcomes occurred across the time period separating my quantitative cases (1992-1993) and my qualitative data (2000-2002). Therefore I use these data to compare adjudication and sentencing rates across the two quantitative datasets.

Appendix 1.2a displays the punishment outcomes in the second dataset. Comparing this table to table 6.4 verifies that the courts I study do indeed produce very similar outcomes in 1998 and in 1992-1993. The frequency of court action in each jurisdiction in 1998 is lower than in the first dataset, though the disparity between the two jurisdictions is consistent with the older data. A larger percentage of cases are acted on in the criminal jurisdiction than in the juvenile jurisdiction. The percentages of adolescents incarcerated are slightly higher in the more recent dataset than in the first dataset, but again the discrepancy between the two jurisdiction types is almost identical in both datasets.

As appendix 1.2b illustrates, the sentence lengths among cases incarcerated in the juvenile jurisdiction in the second dataset is higher than in the first dataset, though once again the disparity between the two jurisdiction types remains. Adolescents

incarcerated in the New York criminal jurisdiction receive sentences that are an average of twice the length of time served by adolescents in the New Jersey juvenile jurisdiction.

Thus, the newer data demonstrate that the relative court outcomes across jurisdiction types did not change markedly from 1992-1993 to 1998. Despite some shifts among the distribution of punishments in the two jurisdiction types, the changes they underwent maintain a consistent distinction between the two jurisdictions; the base punishment rates may have changed, but if so, they seemed to have changed consistently in both jurisdictions.

Appendix 1.2a. Percentage of Cases Acted on, and Percentage Receiving Each Sentence Type, by Jurisdiction and Offense Type at Case Filing

	Juvenile Jurisdiction (New Jersey)				Criminal Jurisdiction (New York)			
	Robbery	Agg. Assault	Burglary	**All Juvenile Jurisdiction**	Robbery	Agg. Assault	Burglary	**All Crim. Jurisdiction**
	%	%	%	**%**	%	%	%	**%**
Any Court Action	44.1	40.2	44.7	**42.4**	58.8	65.5	63.2	**59.7**
if any court action:								
Adjourned Disposition/Adjourned in Contemplation of Dismissal	6.0	15.2	11.4	**11.9**	20.4	11.0	27.8	**20.5**
Fine / ATD	6.0	9.0	13.4	**9.6**	0.0	0.0	0.9	**0.1**
Probation or Suspended Sentence	63.9	58.4	61.0	**60.5**	37.0	32.9	39.8	**37.0**
Incarceration	24.1	17.5	14.3	**18.1**	42.6	56.2	31.5	**42.4**

Appendix 1.2b. Average Custodial Sentence Length for Incarcerated Cases, in Months by Jurisdiction and Offense Type at Case Filing

	Juvenile Jurisdiction				Criminal Jurisdiction			
if incarcerated:	Robbery	Agg. Assault	Burglary	**All Juvenile Jurisdiction**	Robbery	Agg. Assault	Burglary	**All Crim. Jurisdiction**
Avg Sent Length (months)	18.5	13.1	9.1	**13.9**	27.7	27.0	14.8	**26.5**

Repeating the multivariate analyses to predict likelihood of incarceration with the second dataset poses a problem. Because several potentially important variables are missing from the second dataset (detention, arrest warrant, arrests during case processing, previous incarceration, and presence of an associated weapon charge), using these data could result in omitted variable bias. To be thorough, I estimate the model despite the missing data. The results, shown in Appendix 1.3, do not replicate the results of the first dataset, in that the coefficient for jurisdiction type is not a significant predictor of incarceration.

I then re-estimated the models using the first dataset, but with only the variables present in the second dataset. The results of this model still demonstrated a significant effect of jurisdiction type on likelihood of incarceration (results not shown). The fact that the second dataset results were not identical to those of the first is cause for some concern. However, since the descriptive comparisons of the two datasets are very similar, I proceed with confidence that the first, fuller, dataset provides an adequate measure of punishment severity. I use these data to compare one dimension of the distinction between a criminal justice model and a juvenile justice model, rather than to explain or be explained by the qualitative data.

Appendix 1.3. Undstandardized and Standardized Coefficients for Two-Stage Regression of Incarceration in 1998 Dataset

	B	Std. Error	Z	
Age	-0.103	0.201	-0.52	
Sex (0=female; 1=male)	-0.386	0.103	-3.75	***
Ethnicity Dummies (contrast=African American)				
White	-0.301	0.182	-1.66	
Hispanic	-0.198	0.068	-2.93	**
Other Ethnicity	-0.097	0.061	-1.59	
Offense Type (contrast=robbery)				
Burglary	-0.004	0.032	-0.11	
Aggravated Assault	0.014	0.164	0.08	
Associated Weapon Charge	0.444	0.073	6.06	***
Number of prior arrests	0.118	0.050	2.35	*
Jurisdiction (1=juvenile; 2=criminal)	0.061	0.760	0.08	
Constant	1.124			
Log Likelihood	-1702.772			

*p<.05; ** p<.01; ***p<.001

APPENDIX 2: LOGIT TESTS OF HECKMAN TWO-STAGE METHOD

As I state in chapter six, I use the Heckman two-stage probit regression procedure to account for sample selection bias in predicting incarceration. This is necessary because the prediction of incarceration involves the use of a censored sample, in that only cases resulting in conviction are eligible for sentencing. Yet because there is some debate over whether to correct for sample selection (see Greene 1997), I estimate the first equation without the Heckman two-stage correction as well. Deciding which method is more appropriate depends on whether one wants to be able to generalize to the entire sample, or only to those who are convicted. A case can be made for both methods. If conviction decisions are based on quality of evidence rather than on other factors related to sentencing (Vera Institute of Justice 1977), then the question of what factors predict incarceration is relevant for the entire sample of arrestees, and the two-stage estimates are methodologically superior. By correcting for a truncated sample the results can then be generalized to the entire sample, and not just to the portion of the sample that resulted in conviction. In addition, most research on court sentencing has used the two-stage sample selection bias correction method or variations thereof (eg. Steffensmeier and Demuth 2000; Ulmer 1997). However, one could also argue that standard logit regression will be sufficient because the results should only be generalizable to those who are convicted and who thus comprise the population for whom incarceration is an option. To be cautious, I use both methods.

Replicating model 1 from table 6.5 using a logit analysis without any correction for sample selection bias produces identical results (table not shown). That is, jurisdiction is still significant and the most robust predictor of incarceration. Given that these two methods produce the same substantial result, I display the analysis with the more cautious procedure, the Heckman two-stage, which also stays closer to the previous literature.

APPENDIX 3: TESTING MULTIVARIATE MODELS WITH INTERACTION TERMS

In my multivariate analysis I estimate the impact of jurisdiction type on the likelihood of incarceration, controlling for other relevant factors. The equations I estimate in chapter six include only models in which the two jurisdiction types are differentiated by an additive indicator (dummy) variable. This method is the most direct method of answering my research question of whether jurisdiction type is related to punishment severity, but it ignores the possibility that differences in procedures in the New Jersey juvenile jurisdiction and the New York criminal jurisdiction could manifest themselves by giving different weight to other variables in the model. In other words, though I estimate the additive effect of jurisdiction type, I ignore the potential for an interaction effect between jurisdiction type and other predictor variables.

To explore whether an interaction effect might be responsible for jurisdictional differences, I estimate an additional model. This additional model includes each independent variable in the model estimating the effect of jurisdiction type on likelihood of incarceration for the full sample, and adds interaction terms of each independent variable times jurisdiction type (eg. jurisdiction type x sex, jurisdiction type x age, etc.). I compute these interaction terms using a centering technique to avoid multicollinearity (Aiken and West 1991). If the additional model with

interaction terms is a significantly better fit than the main effects model, then the predictor variables have a significantly different impact in the New Jersey juvenile jurisdiction and the New York criminal jurisdiction.

In Appendix 3.1, I display two models: model 1 is the same main effects model shown in table 6.5, and model 2 includes the interaction terms of jurisdiction type with each other independent variable. To compare the goodness of fit of these two models, I consider their log-likelihoods, which conform to a chi-square distribution. I find that model 2 is not a significantly better fit than model 1 ($p > .10$); this suggests that the jurisdictional difference I find in model 1 (and reported in chapter six) is not due to interactive effects. Moreover, the model with interaction terms produces very similar results as the main effects model, with jurisdiction type as the best predictor of incarceration when controlling for all other variables. Thus, estimating this additional model allows me to conclude that an additive model estimating the effect of jurisdiction type through a single indicator variable is the most parsimonious test of the impact of jurisdiction type on punishment severity.

Appendix 3.1. Unstandardized and Standardized Coefficients for Two-stage Probit Regression of Incarceration, Total Sample and With Interaction Terms

	Model 1: Total Sample				Model 2: Interaction Terms			
	B	Std. Error	Z		B	Std. Error	Z	
Age	-0.053	0.072	-0.73		0.301	0.169	1.78	
Sex (0=female; 1=male)	0.413	0.156	2.62	**	1.361	0.640	2.13	*
Ethnicity Dummies (contrast=African American)								
White	-0.114	0.157	-0.73		0.908	0.382	2.38	*
Hispanic	0.071	0.124	0.57		0.319	0.254	1.26	
Other Ethnicity	-0.151	0.139	-1.09		0.269	0.914	0.29	
Offense Type (contrast=robbery)								
Burglary	-0.365	0.199	-1.84		-1.341	0.640	-2.10	*
Aggravated Assault	-0.149	0.096	-1.55		0.213	0.260	0.82	
Associated Weapon Charge	0.270	0.112	2.42	*	0.685	0.198	3.46	**
Detained	0.873	0.239	3.66	***	0.581	0.651	0.89	
Number of prior arrests	0.064	0.006	10.72	***	0.128	0.017	7.33	***
Number of concurrent arrests	0.101	0.052	1.95		-0.206	0.139	-1.48	
Previously Incarcerated	0.928	0.125	7.43	***	0.805	0.342	2.36	*
Arrest Warrant	0.312	0.149	2.10	*	0.426	0.317	1.34	
Jurisdiction Type	1.200	0.103	11.62	***	1.055	0.128	8.22	***
Jurisdiction x Age					-0.215	0.098	-2.19	*
Jurisdiction x Sex					-0.572	0.319	-1.79	
Jurisdiction x White					-0.597	0.249	-2.40	*
Jurisdiction x Hispanic					-0.139	0.175	-0.79	
Jurisdiction x Other Ethnicity					-0.230	0.469	-0.49	
Jurisdiction x Burglary					0.729	0.325	2.24	*
Jurisdiction x Assault					-0.278	0.150	-1.85	
Jurisdiction x Weapon Charge					-0.248	0.160	-1.55	
Jurisdiction x Detained					0.155	0.292	0.53	
Jurisdiction x Prior Arrests					-0.055	0.017	-3.20	**
Jurisdiction x Conc. Arrests					0.243	0.082	2.97	**
Jurisdiction x Prev. Incarc.					0.093	0.187	0.50	
Jurisdiction x Warrant					-0.023	0.257	-0.09	
Constant	-2.814				-9.431			
Log Likelihood	-1803.608				-1790.456			

*p<.05; ** p<.01; ***p<.001

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