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THE CASE PROCESSING OF JUVENILE OFFENDERS IN CRIMINAL COURT AND
LEGISLATIVE WAIVER IN NEW YORK STATE

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I. RECRIMINALIZATION AND WAIVER REFORMS

The recriminalization of delinquency over the past several decades consists of legislation that has attempted to redefine a broad segment of delinquencies as crimes and delinquents as criminals. Juveniles who commit serious offenses or who are chronic delinquents are no longer viewed as appropriate candidates for a treatment-oriented juvenile court. Recriminalization has generally succeeded in increasing the eligible proportion of juveniles transferred to the adult criminal justice system (Champion and Mays 1991; Krisberg et al., 1986).

Although there may be little disagreement as to the need for the criminal court to enter in cases of very serious violence by older juveniles, considerable disagreement exists as to the most appropriate legal procedure for transferring juvenile court jurisdiction. In most states, judicial waiver is the main legal avenue for transferring juveniles to the jurisdiction of the adult criminal court. As mandated in the U.S. Supreme Court's 1966 Kent decision, the judicial waiver process requires a formal hearing in juvenile court where juvenile justice officials decide the appropriateness of criminal court. In an increasing proportion of states, legislative waiver procedures have emerged in which specific offense categories are eliminated from the jurisdiction of juvenile court. Legislative waiver essentially lowers the age of criminal responsibility for juveniles charged with specific categories of felony offenses. A combination of legislative and judicial waiver also exists in many U.S. states.

Despite the judicial waiver requirement for a formal hearing in juvenile court, critics of judicial waiver procedures charge that the decisions of juvenile court officials are based less on offense seriousness and more on the non-offense related substantive concerns of juvenile justice officials. There is convincing empirical evidence to support this claim. Based on national data, Hamparian et al. (1982, p. 130) report that only 32% of judicial waivers in 1978 were for violent offenses. Osburn and Rode (1984, p. 199) report that transferred juveniles in Minnesota included

many "juveniles whose records do not appear to be very serious." They conclude that juvenile court judges are unable "... to identify many juveniles whose records are characterized by violent, frequent, and persistent delinquent activity (p. 199)." Feld (1990, pp. 40-41) reports that in Minnesota, offense seriousness and prior arrests explain very little (3%) of the variance in judicial waiver decisions. Drawing on a sample of violent juvenile offenders in cities with judicial waiver statutes, Fagan and Descenes (1990, p. 348) also conclude that "... judicial waiver statutes empower the juvenile court judge to make a transfer decision without applying objective criteria." Based on his extensive review of waiver legislation, Barry Feld (1987, p. 494) concludes that "... judicial waiver statutes reveal all of the defects characteristic of individualized, discretionary sentencing schema."

Advocates of legislative waiver procedures have also argued that the exclusion of offense categories from the jurisdiction of juvenile court is a more equitable legal avenue for identifying serious, violent delinquents. Bishop et al. (1991, p. 300) suggest that one way to introduce "... greater equity and predictability to the transfer process would be to look to the legislature to bring more offenses (or offense/prior record combinations) within the ambit of the legislative exclusion statute." Feld also concludes that the punishment-oriented objectives of waiver are best met in states that have adopted legislative waiver reforms (1987, p. 511).

Yet the conclusion that legislative waiver eliminates and reduces non-objective sources of judicial discretion may be premature given the fact that past research focuses largely on states with judicial waiver procedures. The reverse waiver procedure allowing criminal justice officials to remove or return eligible delinquents to the juvenile court in states with legislative waiver may reproduce among criminal justice officials the discretionary decision making of juvenile justice officials. More specifically Zimring (1991) argues that legislative forms of waiver are no more equitable than judicial waiver procedures,

because they merely shift the legal sources of official discretion:

Systems that attempt to cope with this problem by providing judicial or prosecutorial discretion to transfer back to juvenile court (a common "safety valve to the safety valve") are no less discretionary because the reference back occurs after a waiver decision. They simply reallocate discretion, generally from a juvenile court judge to prosecutors or criminal court judges (Zimring 1991, p. 275).

In addition to the opportunity for a formal transfer of jurisdiction to juvenile court, prosecutors can also reduce offense charges to categories for which juveniles are not criminally responsible. Moreover, Thomas and Bilchick (1985:479) warn in the context of Florida's prosecutorial system of waiver that criminal court prosecutors may produce more uncontrolled discretionary decisions for juveniles than juvenile justice officials.

This study attempts to fill the current void in empirical research on legislative waiver by focusing on New York's recriminalization of delinquency. Specifically, it looks at the case processing of juveniles in the criminal justice system as a consequence of New York's 1978 Juvenile Offender (JO) Law (Royscher and Edelman 1981; Singer and Ewing 1986). The JO lowered the age of criminal responsibility for designated felony offenses so that a relatively large number of young juveniles are initially placed in the adult criminal justice system. By providing a detailed look at decisions on the status of juveniles in New York's criminal justice system, this study hopes to distinguish the legal and organizational reasons for bringing juveniles into the adult legal process.

I begin this report with a brief description of the event and the act that triggered New York's current recriminalization of delinquency. I include a condensed review of the JO law and its related amendments. In the third section, I extend the legal reasons for assigning criminal responsibility to juveniles into a theory for viewing the inter and intra-jurisdictional context of case processing decisions. In the fourth section, qualitative and

survey sources of data are presented on initial case processing decisions. In section five, I present a detailed analysis of state data on the arrest, adjudication, and disposition of nearly 8,000 juveniles initially placed in New York's criminal justice system.

I analyze the effects of offense, offender characteristics as well as their temporal and jurisdictional context on the assignment of criminal responsibility by various criminal justice officials. Section six highlights the organizational context of criminal punishment for juveniles with additional state data on annual rates of incarceration for convicted JOs. My concluding section points to the need for future research to continue to trace the manner in which juveniles are labeled as offenders within and between systems of juvenile and criminal justice.

II. RELOCATING VIOLENT JUVENILE CRIME IN NEW YORK

A. The Case of Willie Bosket

Among daily reports of lethal violence in New York City in the spring of 1978, the brutal killing of two subway passengers within eight days of each other captured widespread media attention. The victims were both shot in the head and found with their pockets emptied in the back of a subway car late at night. Like other media reported acts of violence, the subway killings created a heightened sense of public fear and concern, particularly in New York where a large segment of the population depended on public transportation.

It was not until the identity of the offender was revealed that fear and concern were transformed into public demands to do something specific about violent crime. The offender was Willie Bosket, a 15-year old who because of his age was ineligible for punishment in New York's criminal courts. According to New York's juvenile justice statutes at the time, Bosket could only be treated as a delinquent in New York's juvenile courts (technically referred to in New York as family court¹). Therefore, his name and history as a delinquent were technically confidential, and legally could not be reported to the media. Still the news reports surfaced telling briefly the story of Bosket's offense, violent history, and prior juvenile court dispositions.

Bosket boasted to the press after the offense that he robbed and murdered because he knew that the harshest penalty he could receive in juvenile court was an indeterminate placement of five years in a Division for Youth (DFY) facility. Moreover, New York's juvenile justice system failed to control Bosket through his earlier treatment in DFY facilities. In fact, just six months prior to the subway murders, Bosket was released from a facility where he had been placed for an earlier robbery conviction. He was released despite the objection of several staff members who were reported to have claimed that Bosket was much too dangerous to be allowed to return to his home environment. The bureaucratic problems of DFY in meeting its treatment mandate were further

highlighted when a staff member in the facility was precluded from letting Bosket stay in his upstate home to avoid his return to New York City.

The media reports also repeatedly stressed that Bosket was a chronic violent offender. They broadcast Bosket's self-reported history of crime in which he claimed to have committed well over a thousand offenses since the age of nine. Bosket's media status as a chronic delinquent was further confirmed by his cousin, who accompanied him at one of the subway murders. He stated that Willie "got a kick out of blowing them [the victims] away (New York Times, March 2, 1978)."

The prior legal processing of Willie Bosket was particularly embarrassing for juvenile justice officials because it occurred in the wake of New York's most recent legislative attempt to be tough on juvenile crime. The 1976 Juvenile Justice Reform Act (JJRA) substantially increased the maximum length of time that New York's juvenile court judges could place violent delinquents in DFY institutions. Prior to the JJRA, juvenile court dispositions were set for a maximum indeterminate period of eighteen months. The JJRA established a set of designated felonies which would allow officials to place violent delinquents in a more punishment-oriented track. Clearly, Willie Bosket slipped through the cracks in New York's juvenile justice process. He was a rare case based on the seriousness of his offenses and his prior history of offending. Still, New York at the time had no other last-resort legal procedures besides that which was contained its juvenile justice system.

In most other states, Bosket would have been transferred to the criminal court based on the severity of his crime and history of violent offenses. Until Bosket, New York resisted prior attempts to pass waiver legislation. In part, New York's juvenile justice system already reflected a relatively low age of criminal responsibility at sixteen. Unlike most other states where older juveniles could be treated as delinquents, New York waited until its juveniles turned sixteen before automatically proceeding with

adult criminal court. In many states, the presumption of delinquency status for persons below the age of seventeen ended with lethal acts of violence. After the birth of juvenile courts in the vast majority of states, criminal court remained a last-resort option through waiver or transfer procedures.

While some proponents of waiver advocated the transfer of juveniles through a waiver hearing in juvenile court, Bosket created a major embarrassment for political officials who previously had resisted waiver legislation. Although waiver and death penalty legislation were repeatedly proposed by a segment of "law and order" legislators, there was prior to Bosket sufficient resistance from the governor and legislators to prevent the passage of both types of legislation.

Yet Willie Bosket made it difficult for the then Governor Hugh Carey to continue to resist waiver legislation. Faced with a tight re-election race and accusations that he was "soft on crime," Carey, soon after reading that Willie Bosket had been placed in a DFY facility for an indeterminate five years, said he wanted legislation that would keep violent juveniles permanently off the streets (McGarrell, 1989). The legislation came quickly in the form of an amendment to the 1976 Juvenile Justice Reform Act (JJRA) and became commonly known as the Juvenile Offender (JO) law.

The JO law lowered the age of criminal responsibility for the designated felonies listed in the JJRA to 13 for juveniles charged with murder and to 14 or 15 for a wide range of other violent offenses. Technically, the initial court of jurisdiction for juveniles charged with designated felonies became criminal court. The governor in proposing the JO law diverged from more common waiver legislation under which juveniles would be subject to judicial waiver procedures, that is, to transfer hearings after an initial hearing in juvenile court.

The JO law reflected the story of Willie Bosket and legislative distrust of the ability of juvenile justice officials to track serious violent juveniles into the adult criminal justice system. By placing initial jurisdiction over juveniles for violent

offenses with criminal justice officials, the JO law mandated a major organizational reform in the case processing of a large segment of juveniles. In combination with New York's already low age of criminal responsibility, the JO law led some to label New York as the most punitive state for juveniles in the U.S. (Smith, et al., 1980).

Soon after Bosket served his five years maximum placement as a juvenile delinquent, he was again arrested. This time it was for an attempted robbery of an elderly person. Although no serious physical injury to the victim was reported in that incident, Bosket's sentencing as a JO in criminal court would have added a minimum of four more years before he was eligible for release. If the JO law was in place at the time of the subway murders, Bosket would have surely been sentenced as an adult for a minimum of nine years to a maximum of life in prison.

Repeated assaults while in prison, including the attempted murder of a prison guard, led to several life sentences for Willie Bosket. Bosket today sits in the segregation wing of a maximum security prison behind a plexi-glass walled cell. He is considered too dangerous to have any contact with the prison staff and other inmates. Clearly, Bosket became the kind of adult violent offender that the juvenile justice process was intended to prevent.

B. The Juvenile Offender Bill

The Juvenile Offender (JO) bill was proposed and passed as an amendment to the JJRA during the early part of the summer of 1978. The JO bill proposed the automatic waiver of juveniles charged with the designated felonies identified by the JJRA into criminal court by reducing the age of criminal responsibility to 13 for murder and 14 or 15 for other specified violent felonies. Like adult offenders, juveniles tried in criminal court would face a public legal process. If convicted, their maximum sentences would be substantially longer than the placement they might have received in juvenile court. For example, the JO bill increased the minimum and maximum sentences for homicide to nine years to life. Under the

JJRA, that same youth would be eligible for a maximum penalty of only five years.

The following table compares juvenile and criminal court penalties for JO and JJRA designated felonies.

Table 2.1
MANDATED JO AND JJRA LAW PENALTIES

<u>Designated Felony</u>	<u>Juvenile Offender Act</u>	<u>Juvenile Justice Reform Act</u>
Type of Offense	(Criminal Court)	(Juvenile Court)
Murder	5-9 to life	5 years
Arson, Kidnapping	4-6 to 12-15	5 years
Rape 1, Robbery 1, Sodomy 1, Burglary 1, Manslaughter	1/3 of Max. to 10 yrs.	3 years
Burglary 2,	1/3 of Max.	3 years
Robbery 2 (physical injury), Assault	1 to 7 yrs.	

Other aspects of the JO law substantially increased the severity of punishment for those juveniles sentenced to imprisonment. First, JOs are to serve their entire length of sentence in maximum security institutions operated by the state's DFY. After the age of 16, they may be transferred to adult corrections. JOs sentenced to lengthy terms must be transferred to adult corrections on their 21st birthdays. As with adults, the decision to release JOs who have served their minimum sentences is determined by the adult parole board. Moreover, subjecting juveniles to an adult parole board departed significantly from past juvenile justice policies and reemphasized the law's criminal justice orientation.

In mandating criminal responsibility for juveniles charged with designated felonies, the JO law thus contained several conflicting mandates. A treatment-oriented mandate reappeared in the form of initial institutional placement in a DFY facility, where educational and rehabilitative services were to be provided.

If the sponsors of the JO law wanted to make the process of criminalization complete, they would have mandated placement in a special unit within the Department of Corrections upon conviction in adult court.

Moreover, the JO law provided criminal justice officials with the option of transferring jurisdiction to New York's juvenile court. For juveniles accused of murder, first degree rape, sodomy, or armed robbery, the JO law required that the removal process be based on one or more of the following elements, phrased in the interests of justice:

(i) mitigating circumstances that bear directly upon the manner in which the crime was committed; (ii) where the defendant was not the sole participant in the crime, the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution; or (iii) possible deficiencies in the proof of the crime.

If the charge against the juvenile involves something other than Class A designated felony offenses, the legal requirements are less explicit and the conditions allowing for transfer to juvenile court relatively vague. For example, the removal process in Class B felonies only require the decision making of the District Attorney. In making this determination of removal, however, officials are directed by the law to consider "individually and collectively" all of the following factors:

(a) the seriousness and circumstances of the offense; (b) the extent of the harm caused by the offense; (c) the evidence of guilt, whether admissible or inadmissible at trial; (d) the history, character and condition of the defendant; (e) the purpose and effect of imposing upon the defendant a sentence authorized for the offense; (f) the impact of the removal of the case to the family court on the safety and welfare of the community; (g) the impact of the removal of the case to the family court upon the confidence of the public in the criminal justice system; (h) where the court deems it appropriate, the attitude of the complainant or victim with respect to [transfer]; (i) any other relevant fact indicating that a judgment of conviction in the criminal court would serve no useful purpose.

If a JO's case is removed to juvenile court, it must "state on the record the factor or factors upon which the court's determination was based [and] give its reasons for removal in detail and not in conclusory terms." Where removal requires only the consent of the District Attorney, the JO law mandates a statement detailing the reason for consenting to removal.

These transfer or removal provisions were undoubtedly intended to provide a needed "safety valve" for the JO law. But they also empowered criminal justice officials, specifically the district attorney, with new sources of legal discretion.

C. Legal Modifications

The 1978 JO law neglected to provide JOs with the legal right to Youthful Offender (YO) status. Although the 1978 JO law attempted to restrict the discretion of legal officials by setting more determinate penalties for juveniles charged with violent offenses, it was clear to many officials that procedural modifications were needed. Without the availability of YO status, the JO law produced a more severe legal process for juveniles below the age of 16 than for youths between 16 and 21. So in 1979 the legislators in New York added a provision to the JO law that allowed for a juvenile's conviction as both YO and JO. YO status sealed a youth's records and allowed for probation and shorter terms of imprisonment². In short, the 1979 Amendment created an additional avenue of legal discretion.

In 1982 a further modification in the administration of the JO law was passed³. Prior to this amendment the state absorbed the total cost of all criminal court convictions. However, if a juvenile was convicted in juvenile court the county of jurisdiction was responsible for 50% of the cost of incarceration or residential placement. The 1982 Amendment to the JO law gradually increased the county's cost of incarceration for convicted juveniles from 12.5% in 1983 to 50% in 1986. Although the 1982 amendment is a relatively obscure piece of legislation, the amendment is important to understanding the JO law's implementation and the real reasons for assigning criminal responsibility to juveniles.

III. REAL REASONS FOR ASSIGNING CRIMINAL RESPONSIBILITY

A. The Context of Real Reasons

The real reasons for assigning criminal responsibility to juveniles go beyond the stated legal reasons contained in waiver legislation. Criminal justice officials will initially claim that the reasons for bringing juveniles into the adult legal process are exclusively legal. But upon further discussion they will also acknowledge a grey area of decision making in which the assignment of criminal responsibility is less dependent on whether or not the juvenile technically committed a designated felony offense.

In the small proportion of cases involving extreme forms of violence, criminal justice officials are generally correct in their initial assessment of the legal reasons for waiver. Criminal justice and juvenile justice officials are nearly unanimous in their enforcement of the legal rules for older juveniles who kill innocent citizens in the pursuit of theft. Such acts place a segment of eligible juveniles on a separate legal track in which there is a tight fit between the decision making of criminal justice officials and the legal intent of waiver legislation.

In a sense, legal officials operate at alternating times in a tightly and loosely coupled criminal justice system. John Hagan (1989, p.118) stresses that "in the absence of political power that is directed toward particular crime-linked goals, American criminal justice systems and subsystems tend to be loosely-coupled." Where the goals are clear that every juvenile caught committing a designated felony offense should be prosecuted as an adult offender, then criminal justice systems tend to behave in a tightly coupled manner. There is a tight fit between the JO law and criminal justice decision making when the police book every juvenile caught committing a designated felony offense, prosecutors prepare a grand jury indictment against every arrested juvenile who showed criminal intent, and judges follow the letter of the law in incarcerating every juvenile guilty of a violent offense.

In other words, waiver reforms are not just ceremonial but

real in that they produce significant change in the legal adjudication and disposition of juveniles. They go beyond their symbolic value when criminal justice officials "rubber stamp" the legally stated penalties that go along with assigning criminal responsibility to juveniles. But to do so criminal justice officials are required to incorporate the law in theory with their routine decision making.

Although the procedures for assigning criminal responsibility to juveniles for brutal acts of violence may be clear to the vast majority of criminal justice officials, decision making appears less tightly structured in less serious, designated felony offenses. In acts of crime that do not involve extreme forms of violence, criminal justice must draw on circumstances other than offense seriousness to determine the appropriateness of criminal court. More is required than merely the juvenile's technical guilt, in that, officials must be convinced that the sentencing of juveniles as adult offenders makes sense and is appropriate in the context of specific organizational goals and interests.

In drawing on their legal discretion to decide the appropriateness of criminal court, criminal justice officials are not "organizational dopes;" their role is not just simply to rubber-stamp the cases of a population of eligible juveniles as JOs (Emerson 1991). Officials use their discretion to consider how offense and offender characteristics fit with their legal mandate to prosecute JOs in the best "jurisdictional" interest of justice.

I emphasize jurisdictional because officials draw on their experiences in a criminal justice system located in a specific geographical setting. The sample of designated felony cases that officials see is not a random one but is based on their prior routine decision making. However, what is routine in one county of jurisdiction may be considered unusual in another county. Similarly, factors considered serious enough to warrant the assignment of criminal responsibility to juveniles for one group of officials may be considered insignificant to other officials.

I see the real reasons for assigning criminal responsibility

to juveniles as a product of organizational concerns and interests that go beyond the objective characteristics of offense and offender. They depend on the inter- and intra-jurisdictional context of legal decision making. By interjurisdictional I mean the variation that occurs between counties in the decision making of criminal justice officials. By intrajurisdictional I refer to the variation that exists between the conflicting perceptions of criminal justice officials located in the same county of jurisdiction.

The personal characteristics of eligible juveniles can be expected to relate to the jurisdictional decision making of officials across counties. In some counties race may be more closely associated with the assignment of criminal responsibility than in other counties. Minorities may be perceived as more serious juvenile offenders independent of the objective severity of their offenses. Similarly, boys may be viewed as more deserving of criminal court because officials in some jurisdictions are more likely to relate repeated serious acts of violence to the gender characteristics of eligible offenders. Moreover, among some sets of officials criminal court may be viewed more as a last resort for older juveniles than younger juveniles.

The assignment of criminal responsibility and the personal characteristics of JOs exist within a jurisdictional context. The police, prosecutors, and judges each develop standards for evaluating the criminal responsibility of juveniles. Rather than think about the criminal justice system as a unified organizational setting, it seems more appropriate to view the police and prosecutors as operating with unique sets of organizational concerns and interests. Prosecutors will at times use their discretion to screen eligible arrests so that the most serious cases are charged in the adult criminal justice system.

Robert Emerson (1991) is particularly insightful in highlighting how case processing decisions are rational and practical within a particular organizational setting. Legal decision making is driven by organizational reasons that go beyond

the individual attributes of the offense and offender. Real reasons are organizational and act as shorthand ways for officials to identify and to talk about "the organizational contingencies" associated with their decision making. According to Emerson "contingency" is "a construction that decision-makers themselves use in assessing and showing the practical rationality of specific decisions (Emerson 1991,p.210)."

In filtering and rubber stamping the decision making of criminal justice officials located at distinct stages in the criminal justice system, the assignment of criminal responsibility is practical and rational from the perspective of those inside the legal process. Waiver legislation allows officials to satisfy their organizational need to avoid crisis, such as when a known delinquent commits a brutal act of violence while on probation.

To avoid crisis in juvenile or criminal justice, officials attempt to predict violent criminal behavior by tracking eligible juveniles into the criminal justice system. Waiver into criminal court allows criminal justice officials rather than juvenile justice officials to determine and to identify the juvenile's possible progression into more serious criminal conduct. Although the initially stated reason for assigning criminal responsibility to juveniles is the occurrence of a designated felony offense, the real reason is avoiding more serious acts of violence.

Yet what are considered serious acts of violence for one set of criminal justice officials located in one jurisdiction with a relatively low rate of crime may not be very serious acts in jurisdiction with a relatively high rate. In the high-density crime rate jurisdiction, it may be too inconvenient to process every eligible JO as an adult offender. In some jurisdictions, a more convenient avenue to pursue for the less-than-the-most serious designated felony offenders may be the juvenile court. Low and high rates of arrests, conviction, and incarceration by county of jurisdiction reflects the inter-jurisdictional variation in the assignment of criminal responsibility to juveniles.

Similarly, intra-jurisdictional variation in the assignment of

criminal responsibility exists when there are high rates of designated felony arrests and low rates of conviction or incarceration. In loosely coupled criminal justice systems, there is disagreement between the police and prosecutors or judges in their routine definitions of what constitutes a criminally responsible juvenile.

The real purpose in assigning criminal responsibility may vary not only at each stage in the criminal justice process but also across jurisdictional settings. In the sections to follow, I highlight the real reasons for assigning criminal responsibility as inclusive of offense, offender, and jurisdictional characteristics.

B. The Principle of the Offense

In New York the automatic waiver of juveniles through the exclusion of offense categories from delinquency statutes emphasizes the principle of the offense. Juveniles cannot be convicted in criminal court for non-designated felony offenses eventhough these offenses by definition consist of serious categories of violent crime. In contrast to states with judicial waiver procedures that require juvenile justice officials to identify serious delinquents, juveniles cannot be convicted in New York's criminal court for non-designated offenses. Thus, states with judicial waiver may focus more on delinquency and less on criminal offenses.

As previously noted, advocates of legislative waiver have emphasized that its provisions for transferring juveniles charged with violent offenses are more determinate than the judicial waiver proceedings that exist in most U.S. states with judicial waiver.

For instance, Barry Feld in his comprehensive review of waiver legislation concludes that

More fundamental changes...have occurred in states that have rejected the traditional offender-oriented juvenile court sentencing philosophy and have emphasized the offense-oriented adult sentencing policies of retribution, deterrence, and selective incapacitation. States have accomplished this goal by legislatively narrowing the scope of juvenile court jurisdiction to exclude youths charged with certain serious offenses (Feld 1987, p.511).

In arguing that the principle of the offense is more likely to determine the criminal responsibility of juveniles in states with legislative waiver than in states with judicial waiver, Feld is suggesting that the personal characteristics of eligible juveniles are of less concern to criminal justice officials than to juvenile justice officials.

David Matza (1964) has described the principle of the offense as treating similar cases along a narrow range of offense-related characteristics. Closely related to the principle of the offense is the principle of equality. According to Matza:

The principle of equality refers to a specific set of substantive criteria that are awarded central relevance and, historically, to a set of considerations that were specifically and momentarily precluded. Its meaning, especially in criminal proceedings, has been to give a central and unrivaled position in the framework of relevance to considerations of offense and conditions closely related to offense like prior record, and to more or less preclude considerations of status and circumstances (1964, p.114).

By equating the seriousness of the offense with the severity of punishment, the principle of the offense is closest to the classical view of making the punishment fit the crime. Determinate sentencing schemes follow this line of legal discourse, in that, they presume that an objective measure of severity can be reproduced in sentencing guidelines that sharply restrict judicial sentencing options.

In contrast to a legal view of offense seriousness, based on

a nominal measure of severity (designated and non-designated felony offenses), a sociological view of crime recognizes the relative meaning of offense seriousness. Although there is a principle related to the handling of similar cases, there is also a subjective state of severity, grounded in particular scales of offenses. The seriousness of the scale and the ordering of offenses creates a particular context in which assessments of offense seriousness are made. The psychophysical scaling literature is particularly informative on this point. In pretesting for the National Crime Severity Survey, Wolfgang et al. (1985) found that the order in which items were presented influenced their perceived severity. As a consequence, the 210 crime scenarios were randomly rotated to different samples of subjects so that aggregated crime severity scores would not be a function of their location on a nastier or nicer list of crimes. Similarly, I expect that a nastier list exclusive of designated felony crimes contains lower scores for the same acts than the same crimes on a broader list of offenses that is inclusive of a wide range of delinquent behaviors (Emerson 1983).

The relative seriousness of crime relates to my earlier point on the amount of attention devoted to crime in big cities and small towns. Acts of deviance that are considered serious crimes in small towns may be considered acts of crime in larger, more urbanized areas. For example, nearly all acts of murder in Buffalo attracts considerable media attention from arrest to conviction, while in New York City, only the most serious of murders make into the media. The daily act of murder in New York City allows officials, the public, and the media to distinguish between murders that are homicides and those that are considered "killings." In Buffalo, no distinction is made in that all killings are reported by the media. Although all killings are serious acts of violence, their perceived severity as heinous acts of murder by legal officials and the public are most likely a function of their frequency and location of occurrence.

Similarly, the perceived official seriousness of designated

felonies can be expected to vary by jurisdiction. In jurisdictions where there are plenty of A and B felonies, C felonies may be more likely to be defined as non-designated felony offenses. In such cases, the assignment of criminal responsibility may be resisted at both the arrest and prosecutorial stages of decision making.

Although the police are technically required to arrest all juveniles charged with designated felony offenses, police discretion may be invoked at times so that more common offense categories of robbery and burglary are defined as non-designated felony offenses. The police as well as prosecutors may confine their assignment of criminal responsibility to juveniles for the most serious of designated felony offenses.

Offense seriousness then is a real reason when it is viewed as serious in relation to a set of other designated felony cases. Again Robert Emerson is especially informative on this point when he observes the holistic nature of legal decision making:

In a variety of social control settings, assessments of the "seriousness" of particular cases (or whatever organizationally relevant dimensions) tend to be made in relation to the kinds of cases regularly encountered in that particular setting (Emerson 1983, p.428).

Therefore, I can expect that variation in public and official perceptions of the seriousness of designated felony offenses influences criminal justice decisions on the criminal responsibility of juveniles at distinct stages in the criminal justice process. This goes back to my earlier point that the police see a larger mix of cases in which to select those offenses and offenders for which the assignment of criminal responsibility to juveniles makes good organizational sense. From the actual pool of juvenile arrests, prosecutors and judges must also make judgments about offense seriousness. Those judgments can be expected to differ from the more narrow mix of cases that are encountered by prosecutors and judges.

Based on a holistic concept of case processing decisions, I can also expect that designated felony arrests for C felonies will

not only exceed their distribution in the population of arrests, but that C felonies will produce lower conviction rates than B or A felonies. Although C-designated violent felonies are offenses for which juveniles can be adjudicated criminally responsible, they are less serious than A or B felonies and, therefore, are less likely to produce a conviction in criminal court. My point is that the assignment of criminal responsibility depends on the relative severity of the offense independent of the juvenile's objective guilt or responsibility for a designated felony offense.

It is important also to bear in mind that real reasons depend on the "seriousness" of the case relative to a particular set of legal officials. In a small segment of very serious cases, the assignment of criminal responsibility to juveniles may appear more automatic. There is little disagreement between the police, prosecutors, judges across jurisdiction and time in the appropriateness of assigning criminal responsibility to a fifteen year old who brutally murders several innocent victims in the pursuit of material gain. The juvenile's offense is so serious that officials see no other choice but to convict the juvenile in criminal court. Not only would the juvenile face JO status but also a sentence of incarceration as would be the case if adjudicated as a delinquent in the juvenile court.

But heinous acts of violence by juveniles are relatively rare events in relation to the larger pool of eligible violent offenses for which criminal responsibility can be assigned to juveniles. Moreover, what is considered heinous can also be expected to vary considerably by county of jurisdiction. In sparsely populated counties, any designated felony offense is a rare event and may be viewed by residents as serious warranting the maximum penalties provided by law in the form of waiver into criminal court. I will return to this point when I discuss the jurisdictional and temporal context of legal decision making.

C. The Principle of Individualized Justice

In contrast to the principle of the offense, the principle of individualized justice is much more inclusive in that it contains "many more items in its framework of relevance (Matza, 1964, p.114-115)." It also requires officials to consider "a full understanding of the client's personal and social character..(Matza, p.115)." This does not preclude consideration of offense characteristics, but rather allows officials to use the offense as just one of many aspects of the eligible offender's case.

Matza (1964) stresses that

Spokesmen for individualized justice do not suggest that offense is irrelevant; rather, that it is one of many considerations that are to be used in arriving at a sound disposition. Offense like many other forms of behavior, is to be taken as an indication or "symptom" of the juvenile's personal and social disorder (p.114).

Yet there are limits that must be set in the individualized justice approach of legal decision making. Its inclusiveness is embedded in a bureaucracy where decisions must be made based on a specific set of routine criteria. Here the real reasons for juvenile justice decision making Matza identifies in the doctrinal qualification of parental sponsorship. The doctrine of parental sponsorship may guide the assignment of criminal responsibility by doing what countless criminology textbooks do in relying on the family as an important predictor of future delinquent behavior. The willingness of parents to supervise their children is not only an important predictor of continued delinquency, but also of legal decision making on the status of eligible juveniles.

The doctrine of parental sponsorship serves to qualify the principle of the offense when it comes time to invoke a last resort such as out-of-home placement or imprisonment. Although Matza speaks of custody, the assignment of criminal responsibility to juveniles also represents a last resort decision:

whether a juvenile goes to some manner of prison or is put on some manner of probation ... depends first, on a traditional rule-of-thumb assessment of the total risk of danger and thus scandal evident in the juvenile's current offense and prior record of offenses; this initial reckoning is then importantly qualified by an assessment of the potentialities of "out-patient supervision" and the guarantee against scandal inherent in the willingness and ability of parents or surrogates to sponsor the child (1964, p. 125).

That is, all things being equal the last-resort sentencing of juveniles requires that "those with adequate [parental] sponsorship will be rendered unto probation, and those inadequately sponsored to prison (Matza 1964, p. 125)."

Officials may qualify their assignment of criminal responsibility by the absence or presence of parental control when the offense is less than the most serious offense. For the less serious categories of offenses, official decision making is more inclusive of individualized characteristics. But the inclusive characteristics of juveniles are bureaucratically narrowed so that greater relevance is given to the juvenile's network of parental or social support.

Other personal characteristics also come into play in determining parental support in the form of proxy measures for the kind of supervision that are believed to reduce the risk of repeated criminal behavior. The juvenile's parental home environment, such as whether or not both parents are present, may be taken as a measure of parental support. As a consequence of the greater prevalence of nontraditional households among minority youth, race may at times also act as a proxy measure of support. This is not to justify or explain any racial disparities that might exist in the criminal justice system's assignment of criminal responsibility, but to take into account part of their possible official justifications.

To repeat, my point is that legal decision making is guided more by perceived "support" and not just by the personal characteristics of the offender in the individualization of

justice. Support for juveniles is invoked to provide arrested JOs with alternative legal avenues for substantive forms of justice. In some jurisdictions, support may be contained in the form of treatment-oriented programs of juvenile court that are presented as an alternative to conviction in criminal court. Indeed, the history of juvenile justice and probation may be viewed as a way of avoiding through its treatment-oriented view of parental support the last-resort penalties of criminal court.

D. Jurisdictional and Temporal Context as Real Reasons

Previously, I stressed that I can expect jurisdictional and temporal variation in the manner in which offense seriousness is perceived by different sets of criminal justice officials. Recall my point that not all killings are similarly viewed as murder in all jurisdictions. In smaller jurisdictions, I expect less serious, designated felony offenses to be viewed as more serious than in larger counties. Violent robberies are less prevalent in small counties, creating more media attention and official concern over the less, serious designated felonies. In sparsely populated jurisdictions, officials may react to C felonies with a level of seriousness that is comparable to the occurrence of a B felony in more densely populated jurisdictions.

In the larger counties of New York City, a routine set of decision-making procedures are in place, leading the reaction of officials to be more insulated from public concern and interest. This insulation from the organization's external environment is surely not the case in extremely serious offenses, such as A felony crimes. But official decision making should be more insulated from the public for less serious, designated felonies. Where criminal justice decision making is of less public concern, I expect a more loosely coupled criminal justice system. In communities where designated felony offenses are rare events, I expect a more tightly coupled criminal justice system to assign routinely criminal responsibility to each juvenile charged with a designated felony offense.

The greater likelihood of the routine handling of designated felonies in large urban counties reflects variation in size of criminal justice bureaucracies. In larger counties with a more specialized, complex division of criminal justice decision making, a new set of procedures for handling juveniles in criminal court may have quickly emerged. The JO law's mandate to change abruptly the manner in which juveniles below the age of sixteen are charged may have faced greater resistance in smaller counties, where criminal justice officials may have needed more time to become acquainted with the unique legal requirements of the JO law.

Finally, the preferred legal avenue for assigning criminal responsibility to juveniles may have been a reduction in the county's cost of incarceration. Recall that the JO law treated all juveniles as adult offenders in determining the cost of incarcerating a juvenile convicted in criminal court. After 1983 the county's cost of incarceration gradually increased. This shift in cost of incarceration can be expected to have influenced the available resources that led to the definition and redefinition of eligible juveniles as delinquents instead of as offenders.

The bureaucratic reason for mandating criminal responsibility and last-resort dispositions, such as incarceration, is further highlighted by Matza when he suggests that residential space is another important determinant of juvenile court decision making:

Let us suppose that the judge is faced with a particular case in which choice between probation and prison is exceedingly difficult. In such a case, he may reason that, since the residential facilities are already vastly overcrowded, no purpose would be served by sending yet another juvenile there. The offender would not be helped and the services to the juveniles already in prison would be reduced by the additional client. Thus, the judge is given guidance by the doctrine of residential availability (Matza, 1964:127).

The legislated change in the proportional cost to counties in the secure confinement of JOs in 1983 can similarly be expected to have implications on rates of imprisonment as well as on rates of arrest and conviction. As an easily overlooked administrative

reform, the cost of incarceration may be one of the real reasons for assigning criminal responsibility to juveniles.

IV. CRIMINAL JUSTICE DECISIONS ON THE INITIAL CRIMINAL RESPONSIBILITY OF JUVENILES

To address the complex issue of implementation, I consider in this section a multitude of data on official decision making and the initial assignment of criminal responsibility. Following Casper and Brereton (1984), I believe that there is no one set of data for evaluating the implementation of criminal justice reforms (Casper and Brereton, 1984.)

I begin in part A with interview data based on with legal officials in New York City, Buffalo and Rochester. I observed the case processing of JOs in Bronx, Queens, Manhattan and Erie Counties. Next in part B, I describe data from a survey of county prosecutors on the likelihood of prosecuting juveniles as adults, and data on case processing decisions in Buffalo. The survey of district attorneys (DAs) is concerned with early decision making in terms of several hypothetical scenarios. The Buffalo data looks at the determinants of the prosecutors decision to refer a JO arrest to the grand jury⁴.

A. Official Qualitative Reactions

When prosecutors are asked what is the most important determinant of the removal process or the decision to charge a juvenile in criminal court, they speak first about offense seriousness and then the prior record of the offender. One senior prosecutor stated that offense seriousness is not always more important than prior record.

When we deal with an offender, we look at his prior record, definitely. We then look at the seriousness of the crime. I don't mean to make some sort of firm priority there. If the crime is bad enough, the fact that he has no prior record is not going to prevent us from indicting him. However, if he does have a record that shows that he has beaten the system, or hasn't profited, the crime could be less serious and he may be indicted.

Prosecutors, in assigning criminal responsibility to juveniles, place designated felony offenses on serious and

nonserious processing tracks. They do not use the word "nonserious" to describe any designated felony but instead the term "ordinary". Murder and rape fall on a more serious track within designated felony offenses, because they are considered extraordinary designated felony offenses. In the words of one prosecutor:

In the ordinary case, when I say ordinary case, it is that case which does not constitute a specific exception: murder, sodomy 1, rape 1, and an armed felony in which the gun is actually operable. If it isn't one of those, then the legislature said the DA alone can now ask for the removal, not the defendant and not the criminal court judge. And the court must grant it if it is in the interests of justice to do so.

Although it is more difficult to avoid assigning juveniles criminal responsibility when they are charged with the more serious designated felony offenses, the assignment of criminal responsibility is not automatic. If prosecutors seek to avoid criminal court for juveniles arrested for serious violent offenses, they must list the set of mitigating circumstances that in their opinion do not mandate a JO conviction. Although the decision to assign criminal responsibility to juveniles as adults is technically shared with criminal court judges for class A felonies, prosecutors can alone decide the appropriateness of criminal court for B and C designated felony offense charges. However, the JO law provides no clear and absolute guidelines as to which eligible juveniles will be removed to juvenile court and which will be sentenced as adults in criminal court. One prosecutor noted that case processing decisions depend more on particular courts and officials, and less on the stated legal requirements.

The only thing that is certain is that the rule may be different tomorrow as far as what people do because the black letter law is itself very vague, but how it's interpreted and how it's put into practice changes from court to court and even sometimes within the court depending on the personnel.

In ordinary cases (the designated felony offenses which do not involve murder, rape, or robbery with a weapon) prosecutors look at circumstances related to the case beyond the characteristics of the offense. Officials consider the arrested juvenile's family background and parental support. This is not only the case at the prosecutorial stage but also at the sentencing stage. In recommending incarceration or probation, prosecutors stress that the convicted JO's family background is important.

We look to see if a JO seems to have a strong supportive family unit. Where there is some potential for rehabilitation from the family unit, then we might consider that as opposed to an individual that is on his own. We have to look at what the ultimate purpose is going to be.

Yet family background is not the only personal characteristic that allows officials to go beyond the offense related circumstances attached to a JO's case. Officials also like to consider the general demeanor of the JO and how that might influence legal decision making. According to one criminal court judge in the Bronx:

What counts most is the appearance of these juveniles. Kids who really look like little kids are not likely to be brought to criminal court. I may react with surprise as to the size of the youth particularly in relation to sentencing adult offenders who are considerably older, tougher looking, and with a much longer sentencing history.

The judge's statement illustrates the importance of the age related characteristics to criminal justice decision making. Although the set of cases may change at each step in the criminal justice process, some JOs maintain certain adolescent characteristics that readily distinguish them from older, adult offenders---namely that they appear too young to warrant prosecution in criminal court. Their more youthful attributes are not just in their physical appearance but also in their offense histories. For juveniles their appearance in the criminal court provides too short an amount of time to produce a criminal record

as is the case with older adult offenders.

To summarize, the interview data suggest officials first redefine the seriousness of designated felony cases into additional categories of seriousness. Murder and rape fall into serious, non-ordinary offense categories, while other designated felony offenses are tracked into less serious dimensions. Officials also allow substantive sources of legal discretion to emerge in case processing decisions by including the extent to which there is parental and educational support for JOs. Finally, officials point to jurisdictional differences in the manner in which they wish to implement the JO law.

B. Perceptions of Prosecutors Based on Extent of Injury and Prior Arrests.

A broader sample of official perceptions was tapped in a one page survey sent by mail to the district attorney (DA) in each of New York State's 62 counties. Surveys were returned by 45 DA offices; the DAs that did not respond generally represented smaller upstate counties in which JO cases are relatively rare. All the counties in the New York City area responded to the survey. In keeping with my promise not to identify a respondent's county of jurisdiction, I present only the aggregated results of my analysis of case processing decisions.

The survey asked DAs to evaluate the likelihood of prosecuting a juvenile as an adult based on two types of designated felony offenses (see appendix A). The first involved a murder by stabbing in which the number of prior arrests are varied:

A juvenile is accused of stabbing another youth with a knife. As a result, the victim dies. The juvenile claims that the victim was mistakenly assumed to be someone who had earlier threatened the juvenile's life.

DAs were asked to rate the likelihood of prosecuting in criminal court if it was the juvenile's first, third, or sixth arrest.

The second incident consisted of a robbery with a knife in which the victim is injured:

A juvenile steals an elderly woman's purse, with the threat of a knife. In the process, she is knocked to the ground. Upon arrest the juvenile claims that the victim's injuries were not intended.

The extent of harm inflicted this time is varied to reflect the seriousness of the injuries as well the severity of the offense. The first scenario is one in which the elderly victim suffered only minor bruises and required no medical attention. In the second situation, the elderly victim experiences a broken arm and overnight hospitalization. In the third and final situation the elderly victim received extensive injuries in which a complex fracture produced hospitalization for a period of six months.

Table 4.1 displays the mean ratings for the two surveyed incidents by the likelihood of prosecution in criminal court (1 very likely; 11 very unlikely). The results of the first scenario regarding the effects of prior arrest indicate that prior offense produces a substantial difference in the likelihood of a case being prosecuted in criminal court. Although the offense is legally murder with a maximum penalty of life and a minimum of five years in a secure facility, a slight majority said they were likely to prosecute in criminal court if it was the juvenile's first offense. If it was the juvenile's third offense, 84% of the DAs said they would prosecute in criminal court. All of the DAs agreed that if the juvenile was arrested six other times, then the juvenile should be prosecuted in criminal court. A difference of means test shows the DAs' rankings based on prior offense are statistically significant.

The second incident in which the extent of injuries inflicted upon the victim varied from minor to serious physical harm also produced substantial differences in the likelihood of prosecuting juveniles in criminal court. Where there is minor injury to the victim, 29% of the DAs said they were likely to prosecute in criminal court. Where the injuries involved overnight hospitalization, the proportion increased to 40%. In the final situation where injuries to the victim produced six month's

hospitalization, 70% of the DAs said they would prosecute in criminal court. Again the difference is statistically significant at the .001 level for each paired comparison.

TABLE 4.1
 DESCRIPTIVE STATISTICS FOR PERCEIVED
 LIKELIHOOD OF PROSECUTING JOS (N=45)

	<u>Mean*</u>	<u>Median</u>	<u>S.E.</u>
<u>Prior Arrest:</u>			
FIRST ARREST	2.64	1.4	.386
THIRD ARREST	1.20	1.1	.082
SIXTH ARREST	1.00	1.00	.000
<u>Offense Severity:</u>			
MINOR INJURY	4.60	4.3	.464
OVERNIGHT HOSPITAL	3.07	2.1	.381
SIX MONTHS HOSPITAL	1.69	1.2	.203

* Scaled 1, very likely; 9 very unlikely

Although the two offenses surveyed technically qualify as JO offenses, the crime scenarios do not accurately reflect the detailed information that criminal justice officials have in preparing their criminal charges. In practice the cases that DAs handle are much more complex. Yet the importance of prior criminal offense history on the assignment of criminal responsibility makes sense if the criminal court is viewed as a last resort for adjudicating criminal punishment. The survey data suggest that prior arrests account for more of the variation in prosecutorial decision making than the extent of injury inflicted upon the victim. The results of the analysis, however, may have looked different if prior arrests were tabulated for the purse-snatching with a knife incident. In other words, I have treated both scenarios as if they were independent events when they clearly are not.

In deciding which cases should be sent where, DAs who

responded to the survey indicated that they gave more weight to prior arrest information. However, such information is only routinely available to criminal justice officials if the prior offenses was a designated felony since the offenses in juvenile court are technically sealed from criminal justice officials.

C. Buffalo Case Processing Decisions

Between September 1, 1978 and December 31, 1985, there were 103 JO arrests in the city of Buffalo, New York. The designated felonies with which these juveniles were charged first required a preliminary hearing in the city's court. As with adult offenders, juveniles charged with designated felonies are initially subject to the prosecutor's decision to seek a grand jury indictment. A grand jury indictment is required in all felony cases brought before the criminal court whether they involve juvenile or adult offenders. The grand jury is led only by the prosecutor and the defense has no opportunity to present evidence.

In this analysis, I consider as a dependent variable the prosecutor's decision to seek a grand jury indictment for juveniles arrested for JO offenses. The non-offense related independent variables are the offender's race and the marital status of the JO's parents. Marital status is based on the number of parents with which JOs reside. As previously stressed, I assume that there is less parental support for JOs residing in single parent households. Race is coded into white and nonwhite JOs. McGarrell also argues that race is linked to the development and implementation of the JO law (McGarrell 1989).

Legally relevant variables are the extent of injuries inflicted on the victim(s) by the offender and prior felony arrests. Injuries are coded on an ordinal scale ranging in value from 1 to 5 (1 = no injuries, 2 = minor injuries, 3 = treated and discharged, 4 = overnight hospitalization, and 5 = death). Prior offenses are measured by the offender's number of prior recorded arrests.

Finally, I consider an additional indicator of offense

seriousness in the form of newspaper coverage publicizing the JOs name at the time of arrest. Recall that arrested JOs are not protected by the juvenile court's traditional requirement of confidentiality. I expect the presence of publicity compounds the perceived severity of offenses, and consequently affects the prosecutor's initial decision to charge juveniles as adults. Media attention is measured by whether the name of arrested JOs appeared in one of the two daily newspapers that existed at the time of the arrest (0=no; 1=yes).

1. The Characteristics of Arrested JOs in Buffalo

Table 4.2 shows that more than three quarters of arrested Buffalo JOs are non-white and 85% were from single parent households. Among nonwhite JOs, 54% are referred to the grand jury compared to 38% of whites. Also, 59% of JOs from single parent households were referred to the grand jury compared to 27% of JOs from two parent households.

TABLE 4.2
DESCRIPTIVE STATISTICS FOR BUFFALO CASE PROCESSING DATA
(N=103)

<u>Variables and Coding</u>	<u>Mean</u>	<u>S.D.</u>
Grand Jury Referral (1 Grand Jury)	.50	.50
Race (1 White, 2 Non-white)	1.77	.42
Injuries (1 to 5)	2.56	1.13
Parental Status (1 married)	.15	.36
Prior Offenses (1 prior)	.54	.50
Media Publicity (1 publicity)	.48	.50

The bivariate relationships between grand jury referral and indicators of seriousness are in the expected direction. The more serious the injuries to the victim, the more likely it is that JO cases were referred to the grand jury. All four juveniles arrested for murder are referred to the grand jury. Among JOs charged with serious injuries against their victims, 71% are referred to the grand jury, compared to 41% of JOs arrested for minor injuries or no injuries to their victims. Similarly, 56% of JOs with a prior offense are referred to the grand jury compared to 45% without a prior felony arrest. Surprisingly, media attention appears to have

had little impact on the decision to bring a JO case forward to the grand jury; 63% of publicized JO arrests were referred compared to 58% of nonpublicized arrests.

2. Multivariate Analysis of Grand Jury Certification :

To determine the relative importance of offense and offender characteristics on the prosecutor's referral of juveniles to the grand jury, several logistic regression models were estimated⁵. The logistic estimates reveal that parental status is inversely related to the JO's probability of being referred to the grand jury. Juveniles from single parent homes are more often referred to the grand jury than juveniles from households living with both parents. If parental marital status is controlled, race becomes a nonsignificant effect on the charging process for arrested JOs.

The only offense-related variable that is significant is the extent of injuries. But the possible effects of prior felony arrest and media coverage are not significant. When the four JO cases involving homicide are excluded from the analysis, the effect of offense seriousness is no longer marginally significant (Table 4.3). The only statistically significant predictor of grand jury referral for non-homicide cases is the number of parents in the JO's household.

TABLE 4.3

LOGISTIC ESTIMATES OF GRAND JURY REFERRALS (HOMICIDE AND NON-HOMICIDE CASES, N=65)

	<u>Coeff.</u>	<u>S.E.</u>	<u>T-Ratio</u>
Offender's Race	-.3290	.7559	-.435
Parental Status	-1.9955*	.8678	-2.300
Extent of Injuries	.5255**	.2694	1.951
Prior Offenses	.6630	.5860	1.132
Reported by Media	.2791	.5660	.493
Constant	-.4622		
Log likelihood	152.112		

Note in this table and the tables to follow: ** P> .10, * P> .05

TABLE 4.4
 LOGISTIC ESTIMATES OF GRAND JURY REFERRALS
 (NON-HOMICIDE CASES, N=62)

	<u>Coeff.</u>	<u>S.E.</u>	<u>T-Ratio</u>
Offender's Race	-.2120	.7633	-.278
Parental Status	-2.0881*	.9048	-2.308
Extent of Injuries	.4119	.2886	1.427
Prior Offenses	.5580	.5931	.941
Reported by Media	.1732	.5721	.303
Constant	-.3256		
Log likelihood	149.424		

In these data, the number of parents with which arrested JOs live, a non-offense related substantive determinant of legal discretion, is the most important determinant of the prosecutor's decision to refer to a JO arrest to the grand jury. Based on the initial processing of juveniles arrested for serious offenses, the data analysis for Buffalo supports the view that the lack of "sponsorship" is a "real reason" for assigning criminal responsibility to juveniles. In Buffalo, non-offense related considerations are not eliminated by legislative or automatic forms of waiver. Rather, legislative waiver at the stage of indictment in Buffalo appears to duplicate the discretionary decisions of juvenile justice officials with that of criminal justice officials.

In recent research by Mark Jacobs (1990), parental marital status is also an important predictor of the real or organizational reasons for dispositions in a contemporary juvenile court. In a multivariate analysis of juvenile court dispositions, Jacobs (1990, p.216) concludes that

Children from nontraditional families and children living apart from their parents are at risk of out-of-home placement entirely out of proportion to the risk of recidivism they pose. There may be compelling organizational and institutional reasons for this sort of treatment, but they are not correctional in nature.

D. Relocating Substantive Justice

The results of this part of the analysis similarly suggest that organizational and institutional interests in substantive justice follow juveniles into the criminal justice system. Despite

legislative attempts to accomplish the reverse by getting tough on juvenile crime, substantive justice reemerges in the decision making of criminal justice officials. The effect of parental support on Buffalo's initial assignment of criminal responsibility in the form of grand jury referral suggests support for the argument that legislative waiver reproduces substantive sources of legal discretion among criminal justice officials (e.g., Zimring 1991).

V. THE ASSIGNMENT OF CRIMINAL RESPONSIBILITY:
NEW YORK STATE CASE PROCESSING DATA

I now shift my focus to the case processing of juveniles arrested as JOs for designated felony offenses in New York State. In this chapter, I analyze data collected by the New York State Division of Criminal Justice Services (DCJS) on all juveniles arrested as JOs between September 1, 1978 (when the JO law was implemented) and May 30, 1985 (the time of my request). Prior to 1985, DCJS produced annual reports (DCJS 1983;84;85) on JO arrests and convictions. In the tradition of many state agency reports, the DCJS publications contained an inventory rather than an analysis of case processing decisions.

To go beyond the tabulations contained in the DCJS reports, I requested in 1985 the data produced to create the DCJS reports. Part of my justification for requesting the DCJS data was my initial interest in the deterrent effect of the JO law (Singer and McDowall, 1988). I wanted to examine the DCJS data at the time to determine the manner in which the law was implemented.

In 1992, I requested a more recent, updated set of DCJS data. However, I was informed that since 1986, DCJS sealed the records of juveniles arrested for designated felony offenses who were not convicted in criminal court. In other words, the case records of those juveniles not convicted in criminal court were now being deleted from the DCJS data (letter from Marjorie Cohen of DCJS, April 21, 1992). A more current data set then would exclude the proportion of juveniles who were not convicted in criminal court, precluding an analysis of the effects of legal discretion at the police and prosecutorial stages of decision making.

A detailed analysis of the available DCJS data to determine the real reasons for assigning criminal responsibility to juveniles contains several major advantages. First, the DCJS data are based on criminal justice decisions for an extremely large number of relatively young juveniles. The data incorporate the arrest records of approximately 10,000 juveniles charged as adult

offenders. Moreover, the arrested juveniles are all charged with offenses committed prior to their sixteenth birthday.

In addition to case processing decisions for each of New York's counties of jurisdiction, the DCJS data contain the arrest charges and the juvenile's age, gender and race. The temporal and jurisdictional context are measured based on the date of arrest and county of jurisdiction. Finally, the New York State Identification number (NYSID) attached to each arrest provides for the determination of repeated designated felony offenses.

A. Arrests

I first tabulated the penal law numbers attached to each arrest record to count the most serious offense. Researchers typically reduce an incident of crime to its most serious offense charge. This follows the recommended procedure in the Uniform Crime Reporting (UCR) Handbook.

The distribution of arrests based on the most serious offense charge is presented in table 5.1.

TABLE 5.1
JUVENILE OFFENDER ARRESTS BY OFFENSE CATEGORIES

	<u>Number</u>	<u>Percent</u>
Homicide . . .	584	. . 5.9
Manslaughter .	12	. . 0.1
Rape and Sodomy	932	. . 9.4
Robbery 1st .	4203	. 42.3
Robbery 2nd .	2708	. 27.3
Assault 1 . . .	588	. . 5.9
Burglary . . .	653	. . 6.6
Arson	221	. . 2.2
Kidnapping 1st .	9	. . 0.1
Kidnapping 2nd	16	. . 0.2
Other Offenses	11	. . 0.1
Total	9937	. 100.0

About 70% of the nearly 10,000 recorded designated felony arrests in the DCJS data are for robbery offenses. Most robbery arrests are recorded as acts of robbery in the first degree; these are incidents in which the victim was injured or threatened with a weapon, such as a gun or a knife. The less serious category of robbery in the second degree refers to incidents in which the offender possessed a weapon but did not use it against the victim.

The next most common arrest charge after robbery is the rape/sodomy category of offenses. Although this type of designated felony offense constitutes a much smaller proportion of the UCR index categories of violent offenses, rape/sodomy represents 9% of all JO arrests. The fact that the bulk of JO

arrest charges are for the most serious categories of designated felony offenses is further reflected in homicide charges.

Based on table 5.1 one might mistakenly assume that murder is as common a juvenile crime as assault and burglary, but this is clearly not the case. Rather, the distribution of offenses reflects police arrest decisions to charge juveniles as adult offenders for the most serious offense charges. However, the tendency to inflate offense charges in part reflects the legal requirements of the JO law. Juveniles can not be assigned criminal responsibility for offenses in New York unless they are charged with serious categories of robbery, assault, and burglary. That is, while all robberies in the first degree are designated felonies, not all legal categories of robbery in the second degree are offenses for which juveniles can be assigned criminal responsibility.

The arrest charges may also reflect initial decision making at the point of arrest to overcharge offenders. As is the case with adult offenders, the police may inflate the arrest charges to give prosecutors room to negotiate a plea of guilty. I have no way of knowing the degree to which this is indeed the case based on the DCJS data. However, as is the case with adult offenders, it is rare for JOs to be charged with only one offense. Although the distribution of offenses is based on the most serious offense charge, incidents of violence more often than not contain a multitude of offense charges. As critical reviews of official crime statistics have long suggested (e.g., Sellin and Wolfgang 1964), it is important to go beyond the legal categories and to consider the multitude of charges attached to each arrest.

1. Offense Seriousness

To count the seriousness of crime, I noted that researchers traditionally have drawn on the UCR definition of index offenses. In their critique of the measurement of crime based on legal categories, Wolfgang et al. (1985, p.132) relate the manner in which crime is counted based on the following incident drawn from

the UCR's recording handbook:

A holdup man forces a husband and his wife to get out of their automobile. He shoots the husband, gun whips and rapes the wife (hospitalized) and leaves in the automobile (recovered later) after taking money (\$100) from the husband. The husband dies as a result of the shooting.

But criminal justice officials are indeed sensitive to the complex elements of the above offense by the fact that they record a multitude of offense charges. Prosecutors do not restrict their decision making to only the UCR category of homicide. They also consider the rape and theft in preparing the offense charges. Yet for the purpose of indexing crime, the UCR instructs the police to count only the most serious offense, a homicide.

By employing the UCR manner of counting only the most serious offense category, researchers frequently miss the other elements of a crime that are routinely associated with case processing decisions, such as the rape and theft in the above incident. To produce a more sensitive measure of offense seriousness, I totaled all the offense charges to provide a measure of arrest seriousness. My measure of arrest seriousness is a composite measure that weights the offense charges by the total severity of all arrest charges. The weights are derived from ratio scores produced in the National Crime Severity Survey (NCSS) (Wolfgang et al., 1985). The NCS scores are based on a 1977 survey of approximately 60,000 persons, which was conducted as a supplement to the annual National Crime Survey of victimization.

The penal law violations and weights are listed in table 5.2. Based on the NCSS ratio score attached to an incident in which "a person stabs a victim to death," a homicide is coded as having a value of 36. Manslaughter is 28 using the NCSS description for a wife killing her spouse. Attempted murder is scored at 19 based on an NCSS incident in which

A person intentionally shoots a victim with a gun. The victim requires treatment by a doctor but not hospitalization (Wolfgang et al., 1985:49).

Other designated felony offense charges are similarly weighted

based on the NCSS ratio scores to derive a total measure of offense seriousness.

TABLE 5.2
OFFENSE SERIOUSNESS WEIGHTS
AND PENAL LAW VIOLATION CODES

<u>Offense</u>	<u>Severity Score</u>
A Felonies:	
Murder	36
Arson	22
Kidnapping	22
Attempt.Murder	19
Attempt.Kidnap	12
B Felonies:	
Rape	26
Forcible Sodomy	26
Manslaughter	28
Sexual Assault	26
Robbery first	17
Burglary first	16
Arson Second	13
C Felonies:	
Assault	12
Robbery Second	10
Burglary Second	10

It is important to bear in mind that my measure of offense seriousness is based on a particular dimension of severity. Another dimension of offense severity might be the stated punishment attached to various offense charges. Or, it might be more appropriate to survey the perceived severity of crime among prosecutors rather than among the general public. However, the research on offense seriousness scoring suggests that there is considerable convergence in the popular public view and the official view of offense seriousness (Wolfgang et al., 1985). Moreover, when I viewed the data through an ordinal weighting of offense seriousness, according to the legal categories of A, B, and C designated felony offenses, the results are similar to that of my interval level measure based on the NCSS ratio scores⁶.

2. Offender Characteristics

As previously noted, the DCJS indicators of offender characteristics are limited to the age, gender, and race of arrested juveniles. An additional measure of offender characteristics I recoded in the form of prior designated felony arrest. The NYSID numbers attached to each case record allowed me to sort the file so that I could determine which juveniles were arrested as JOs more than once. The last arrest is used to determine prior offense status. Recall that the data set is limited to a short time interval of several years because JO status ends at sixteen. To qualify for a prior arrest, a juvenile would have had to commit two or more offenses between his or her fourteenth and sixteenth birthday (or thirteenth for homicide).

Offense categories in Table 5.3 show little variation in the mean age of arrest. The average age of JOs is 15.2 for all arrests. However, older juveniles are more likely to face arrest charges for kidnapping. The mean age of arrest for murder includes thirteen year old juveniles, while for other offenses juveniles must be at least fourteen.

TABLE 5.3
MEAN AGE OF ARREST BY TYPE OF OFFENSE

	<u>Mean</u>	<u>Frequency</u>
Homicide	15.29	522
Manslaughter	15.32	11
Rape and Sodomy	15.15	843
Robbery 1st	15.22	3823
Robbery 2nd	15.23	2457
Assault 1	15.33	526
Burglary	15.28	599
Arson	15.16	198
Kidnapping 1st	15.49	7
Kidnapping 2nd	15.30	12
Other Offenses	15.39	10
Total	15.23	9,008

Table 5.4, arrest severity, shows that older juveniles are slightly more likely to be charged with more serious offenses. It is important to bear in mind that the relationship between age and seriousness is in part an artifact of the small proportion of juveniles charged with homicide offenses. As previously noted, juveniles at the age of thirteen can only be charged with homicide. However, the greater seriousness attached to the offending behavior of older juveniles is a consequence of their increased probability of committing more serious crimes. With the available DCJS data, I cannot tell the extent to which offense seriousness is a function of the charging process or the actual incidence of serious violent crime.

TABLE 5.4
MEAN SERIOUSNESS AND FREQUENCY OF ARRESTS BY AGE

<u>Age Category</u>	<u>Mean</u>	<u>Cases</u>
13 to 14.5	19.12	3080
14.5 to 15.5	18.92	2741
15.5 and older	19.25	3187
Total	19.10	9008

Table 5.5 shows that boys are more likely than girls to be charged as JOs. Only 7% of juveniles arrested for designated felony offenses are girls. Girls are more likely to be charged with aggravated assault, while boys are more likely to be charged with murder or with robbery in the first degree (table 5.5). The percent of girls charged with robbery in the first degree is 32% compared to 43% of boys. However, a greater percentage of girls are charged with robbery in the second degree, 35% compared to 27%.

TABLE 5.5
TYPE OF OFFENSE BY GENDER

	<u>Female</u>	<u>Male</u>	<u>Total</u>
Homicide	4.1* (30)**	6.0 (554)	5.9 (584)
Manslaughter	0.3 (2)	0.1 (10)	0.1 (12)
Rape and Sodomy	2.5 (18)	9.9 (914)	9.4 (932)
Robbery 1st	32.2 (236)	43.1 (3967)	47.3 (4203)
Robbery 2nd	34.7 (254)	26.7 (2454)	27.3 (2708)
Assault 1	12.4 (91)	5.4 (497)	5.9 (588)
Burglary	8.5 (62)	6.4 (591)	6.6 (653)
Arson	4.8 (35)	2.0 (186)	2.2 (221)
Kidnapping 1st	0.3 (2)	0.1 (7)	0.1 (9)
Kidnapping 2nd	0.1 (1)	0.2 (15)	0.2 (16)
Other Offenses	0.1 (1)	0.1 (10)	0.1 (11)
Total	100.0 (732)	100.0 (9205)	100.0 (9937)

* Column Percent

** Number of JOs in parenthesis

The mean seriousness of arrest by gender in table 5.6 shows that boys on average also have higher offense seriousness scores. The mean seriousness of girls' arrests is 17 compared to 19 for boys' arrests. The greater seriousness associated with male arrests may not only reflect the actual incidence of behavior, but

also the behavior of the police in the charging of JOs. With the available data, I cannot tell if variation in the mean seriousness of arrests is a reflection of the actual incidence of designated felony offenses or a tendency on the part of officials to charge males with more serious offenses.

TABLE 5.6
MEAN SERIOUSNESS BY GENDER

	Mean	Freq.
Males	19.23	9,205
Females	16.91	732
Total	19.10	9,937

In table 5.7, the racial characteristics of arrested juveniles show that 85% are nonwhite juveniles. Black and hispanic juveniles are overrepresented based on their distribution in the population according to census statistics (New York State, Statistical Yearbook, 1983, p.18). But Table 5.7 also shows that white juveniles are more often arrested for more serious offenses. As with gender, racial differences in the seriousness of arrest charges emerge in the robbery offense categories. Among blacks, robbery in the first degree constitutes 42% of all arrests, while robbery in the second degree consists of 31% of all arrests. Among whites, robbery in the first degree constitutes 38% of all arrests while robbery in the second degree consists of only 16% of all arrests.

In other words, if white juveniles make it into the population of arrested JOs, they are more often charged with homicide, arson, or kidnapping. These are A felonies for which criminal justice officials may be less able and willing to use their legal discretion to avoid the assignment of criminal responsibility. Note that 8.4% of white juvenile arrests are for homicide offenses compared to 4.8% of black arrests.

TABLE 5.7
MOST SERIOUS ARREST CHARGE BY JUVENILE'S RACE

	<u>White</u>	<u>Black</u>	<u>Hispanic</u>	<u>Total</u>
Homicide*	8.4 (127)	4.8 (327)	7.6 (119)	5.8 (573)
Manslaughter	.1 (2)	.1 (8)	.1 (2)	.1 (12)
Rape/ Sodomy	11.1 (168)	9.5 (644)	77.5 (118)	9.4 (930)
Robbery 1st	38.5 (582)	41.9 (2,840)	47.7 (751)	42.3 (4173)
Robbery 2nd	16.5 (250)	31.2 (2112)	21.0 (331)	27.3 (2693)
Assault	7.5 (94)	5.3 (361)	6.9 (108)	5.9 (582)
Burglary	11.1 (168)	5.6 (377)	6.4 (100)	6.5 (645)
Arson	6.2 (94)	1.4 (93)	2.0 (31)	2.2 (218)
Kidnap.1st.	.1 (2)	.1 (5)	.1 (2)	.1 (9)
Kidnap. 2nd	.2 (3)	.1 (8)	.3 (5)	.2 (16)
Other	.3 (4)	.0 (1)	.4 (6)	.1 (11)
TOTAL	100.(1513)	100.(6776)	100.(1573)	100 (9862)

Note: Numbers displayed are column percents and number in parenthesis are the population of arrested JOs.

In table 5.8 racial variation in the probability of offense charges by race is further represented in the mean serious scores for black, hispanic, and white juveniles. The total mean seriousness of arrests for black juveniles is substantially less than for white and hispanic juveniles.

TABLE 5.8
MEAN SERIOUSNESS AND FREQUENCY OF ARRESTS BY RACE

<u>Race</u>	<u>Mean</u>	<u>Freq.</u>
White	20.10	1513
Black	18.65	6776
Hispanic	19.77	1573
Total	19.0	9862

The arrest of blacks for less serious designated felony offenses suggests either that the police are less inclined to assign criminal responsibility to white and hispanic juveniles or that white and hispanic juveniles commit more violent offenses than blacks. There is no reason to believe that whites are more violent

than blacks. Rather, I believe that the above table provides convincing evidence that the reasons for charging juveniles as adult offenders are not confined to the objective characteristics of designated felony offenses.

Table 5.9 shows that a total of 8,755 juveniles were arrested for 9,975 incidents. Among those arrested more than once, 17% experienced an arrest three or more times. As might be expected, juveniles arrested two or more times face charges that are more serious than those arrested only once as JOs. Recall that eligible arrests cover designated felony offenses that occurred while juveniles are under the age of sixteen.

TABLE 5.9
FREQUENCY AND SERIOUSNESS OF ARRESTS BY PRIOR ARRESTS

	<u>Mean</u>	<u>Cases</u>
First Arrest	19.20	7,920
Second Arrest	19.30	735
Three or More Arrests	19.82	170
Total	19.22	8,825

3. Jurisdictional and Temporal Context

Table 5.10 displays the frequency, rate, and mean seriousness of arrests in the twelve largest counties within New York State. The four largest counties are located in New York City and account for 85% of JO arrests. Brooklyn alone produced over one-third of JO arrests. The rates of arrest based on the total and juvenile populations are substantially lower in non-New York City counties. Erie county which includes New York state's second largest city, Buffalo, recorded little more than 1% of the total JO arrests, although its population is comparable to downstate counties where JO arrests are more common.

TABLE 5.10
FREQUENCY, RATE, AND SERIOUSNESS OF ARRESTS BY THE TWELVE LARGEST
NEW YORK STATE COUNTIES OF JURISDICTION

	<u>Arrests</u>	<u>Pop.Rate*</u>	<u>Juv.Rate*</u>	<u>Mean Ser.</u>
Brooklyn	3490	15.64	460.79	18.70
Queens	1155	6.11	205.93	18.86
Manhattan	2134	14.95	683.84	18.07
Nassau	168	1.27	33.60	18.45
Suffolk	256	1.99	46.00	18.40
Bronx	1668	14.27	384.08	20.42
Erie	129	1.27	35.43	24.22
Westchester	185	2.13	59.42	18.45
Monroe	119	1.69	47.24	23.20
Onondaga	101	2.18	59.96	19.63
Richmond	167	4.74	124.62	17.93
Albany	84	2.94	92.13	16.85
Total for other counties	281	10.82	250.62	22.02
Total	9,937			

*Population for 14 and 15 year age group in New York.

**Arrests per 100,000 14 and 15 year-old juveniles.

Moreover, the mean arrest seriousness by jurisdiction is related in part to the frequency of arrests. The mean seriousness scores for Erie and Monroe counties are 24.2 and 23.2 respectively, compared to 18.7 for Brooklyn. The substantially higher mean seriousness scores for the western part of New York State suggest greater selectivity among Erie and Monroe county officials in the arrest and the initial assignment of criminal responsibility.

Jurisdictional disparities in the severity and frequency of JO arrests are not just a product of the unique handling of JO cases in New York City. Within New York City (NYC) and non-New York City counties, Manhattan has the highest rate of arrests and among the lowest arrest severity rates. In the capital county of New York State, Albany, officials seem to follow the letter of the JO law by charging a larger proportion of juveniles for a wider range of designated felony offenses. Albany's mean seriousness of arrest is 16.9 compared to 24.2 for Erie County. Among NYC counties, Bronx officials produce on average more serious arrests. In contrast to Richmond and Manhattan with mean seriousness totals of 17.9 and 18.1, the mean seriousness of arrest in the Bronx is 20.4.

It is also important to note that rates of seriousness by county of jurisdiction are not merely a product of variation in rates of crime. There is no reason to believe that juveniles commit more serious violent offenses in Buffalo (Erie County) or Rochester (Monroe County) than in other parts of New York State. Moreover, there is no reason to believe that citizens of Albany are so fortunate that they are victimized by only the least serious, designated felony offenses.

Rather, I believe a more accurate interpretation of the statistics in table 5.10 is that the frequency and seriousness of offense charges reflect jurisdictional filtering of what constitutes a designated felony offense. Officials in Buffalo and Rochester only charge juveniles as JOs for the most serious of designated felony offenses. The juveniles who commit less serious, designated felony offenses are charged more often as delinquents and, therefore, are not considered part of the criminal justice process. By being more selective about who is assigned criminal responsibility, Western New York criminal justice officials initially increase the necessary severity of offense required to assign criminal responsibility.

The strict and loose interpretation of JO status at the arrest stage based on the stated requirements of the JO law corresponds to my earlier discussion of loosely and tightly coupled legal systems. In Buffalo, the criminal justice system is loosely coupled in that juveniles are only arrested as offenders for the most serious designated felony offenses. In Albany, a more tightly coupled criminal justice system is at work in that juveniles are initially placed in the criminal justice system for a wide range of eligible designated felony offenses.

Further support for the more loosely coupled manner in which designated felony offense status is likely to be applied is reflected in the relationship between offense seriousness and the frequency of arrests. The rate of arrest is based on the frequency of arrests divided by the county population and multiplied by 100,000. In Albany more juveniles are arrested as JOs than in

Erie County based on their juvenile populations. The rate in Albany is 92 per 100,000 juveniles compared to 35 in Erie County, and their mean seriousness scores are 17 and 24 respectively. In counties where fewer juveniles experience JO arrests, the mean seriousness of arrest is substantially greater. In other words, criminal justice officials in those counties where fewer juveniles are arrested appear to be more selective in the types of juveniles to whom they assign criminal responsibility.

The relationship between offense severity and frequency is also related in table 5.11 to the temporal context of JO arrests. The mean seriousness of arrests over time increased while the frequency of arrests declined. In 1979 (the first complete year of the JO law), there were 1,600 JO arrests with a mean seriousness of 18.7, while in 1984 (the last complete year of data collection) JO arrests declined to 1,287 and the mean seriousness of arrests increased to 19.8. During this same time period, there was no comparable decline in the rate of violence committed by juveniles (Singer and McDowall 1988). Rather the rise in mean seriousness coupled with a decline in the frequency of arrests suggests that the police were gradually becoming more selective in their arrests of juveniles for designated felony offenses.

TABLE 5.11
FREQUENCY, RATE AND SERIOUSNESS OF JUVENILE OFFENDER ARRESTS BY
YEAR

<u>Year</u>	<u>Number of Offenses</u>	<u>Mean Ser.</u>	<u>Population</u>	<u>*Rate**</u>
1978	596	17.4	617950	96.4
1979	1600	18.7	611836	261.5
1980	1533	18.7	615836	248.9
1981	1657	19.0	586090	282.7
1982	1454	19.5	566457	256.7
1983	1266	19.5	546824	231.5
1984	1287	19.6	527191	244.1
1985	544	19.8	507558	107.2

*Population for 14 and 15 year age group in New York.

**Arrests per 100,000 14 and 15 year-old juveniles.

As is the case with offender and jurisdictional characteristics, the linear increase in the mean seriousness of arrests by year follows an ordinal measure of seriousness based on felony arrest categories (A, B, and C felonies coded as 3, 2, and 1). Based on type of designated felony offense, the seriousness of arrest charges rose from 1.89 in 1978 to 2.08 in 1982. Whether measured on an ordinal or interval scale of severity, the seriousness of arrests gradually increased from the time of the JO law's initial implementation.

4. Jurisdictional Downstream Consequences and the Severity of JO arrests

Recall that I argued the real reasons for legal decision making as being contingent on case outcomes at later stages in the criminal justice process. Part of the jurisdictional contingencies

that I hypothesized to account for legal decision making at the arrest stage is measured in the jurisdictional probability of a JO conviction in criminal court.

In table 5.12 the probabilities of conviction in criminal court and the mean seriousness of arrests are tabulated for the twelve most populated counties of New York State. The rates reveal that the mean seriousness of JO arrests are inversely related to conviction rates. Jurisdictions with low conviction rates contain relatively high mean seriousness scores. Similarly, jurisdictions with high conviction rates produce low mean seriousness scores. Albany and Erie counties are two extreme examples of this point. On the one hand, Albany has the lowest mean seriousness of arrests (16.85) and the highest conviction rate (.39). On the other hand, Erie county has the lowest conviction rate (.07) and the highest mean seriousness of arrests (24.22).

TABLE 5.12
CONVICTION AND SEVERITY OF ARREST RATES BY JURISDICTION

County	Freq.	Conv. Rate	Mean Ser.
Brooklyn	3490	.23	18.70
Queens	1155	.22	18.86
Manhattan	2134	.27	18.07
Nassau	168	.29	18.45
Suffolk	256	.23	18.40
Bronx	1668	.29	20.42
Erie	129	.07	24.22
Westchester	185	.24	18.45
Monroe	119	.12	23.20
Onondaga	101	.32	19.63
Richmond	167	.19	17.93
Albany	84	.39	16.85
Other Small Counties	281	.18	22.02

The fact that Albany convicts nearly 40% of arrested juveniles for the least serious designated felony offenses (mean 16.9) leads me to suggest further that there is more rubber-stamping and less filtering at all levels in Albany County than in other counties of New York State.

Albany's higher conviction rate supports my earlier point that decision making in Albany is more tightly coupled than in other

jurisdictions within New York State. Loose coupling again appears to be the case in Erie County where juveniles are arrested for only the most serious designated felony offenses (mean 24.2), and are less likely to be convicted in criminal court. Only 7% of JOs are convicted in Erie County's criminal court compared to 39% of JOs in Albany County's criminal court.

5. Multivariate Analysis of Arrest Severity

The relative importance of offender, jurisdictional, and temporal characteristics on offense seriousness is examined with ordinary least-square regression models. In table 5.13, descriptive statistics related to the arrest and adjudication of the total population of JOs are presented. Recall the sorting of cases to produce the prior offense variable reduced and transformed the DCJS arrest data into an offender-based data file. Missing values further reduced the total number of cases for analysis to 7,803.

The label of some independent variables needs explanation. The temporal context is measured by ARSTIME, which is the month of arrest since the start of the JO law. The jurisdictional context is measured by the following variables for each of New York's counties: LNPOP is the county's population transformed to its natural log value; AVGSER is the average mean seriousness of arrests; AVGJOYO is the average mean rate of conviction for juveniles; AVGSENT is the average mean length of sentence; AVGCSTDY is the average mean rate of incarceration. The dependent variable in this section is offense severity; the SERIOUS variable based on the total offense charges transformed to their NCS severity scores. In later sections, I relate the SERIOUS variable as an independent predictor of adjudication and dispositions. Adjudications will be measured as a dependent variable in later sections based on JOYO status (conviction in criminal court), JD status (removal to juvenile court), and ADJSEV (the severity of adjudication.)

TABLE 5.13
DESCRIPTIVE STATISTICS FOR JUVENILES
CHARGED WITH DESIGNATED FELONIES
NEW YORK STATE (N=7,803)

<u>Variables</u>	<u>Mean</u>	<u>S.D.</u>
AGE (13-19 range)	15.252	(.563)
GENDER (Boys 1)	.924	(.267)
RACE (Black juveniles 1)	.682	(.466)
SERIOUS (10-105; dep.& indep.)	19.266	(11.453)
PRIOR (Prior Arrest 1)	.107	(.309)
ARSTIME (1-80)	41.632	(21.535)
LNPOP (10.95-14.62)	14.198	(.523)
AVGSER (16.85-32.67)	19.051	(1.366)
AVGJOYO (.07-.80)	.247	(.045)
AVGSENT (12-80)	33.840	(4.762)
AVGCSTDY (.25-.91)	.580	(.074)
JOYO (Conviction 1, dep.var.)	.257	(.437)
JD (Removal 1, dep.var.)	.308	(.462)
ADJSEV (0-3; dependent)	1.909	(.974)

<u>Variable</u>	<u>New York City</u> (N=6,722)		<u>Non-NYC Counties</u> (N=1,081)	
	<u>Mean</u>	<u>S.D.</u>	<u>Mean</u>	<u>S.D.</u>
AGE	15.256	(.560)	15.231	(.580)
GENDER	.926	(.262)	.911	(.285)
RACE	.694	(.461)	.602	(.490)
SERIOUS	19.099	(11.234)	20.303	(12.686)
PRIOR	.117	(.321)	.048	(.214)
ARSTIME	41.613	(21.282)	41.747	(23.053)
LNPOP	14.324	(.336)	13.411	(.745)
AVGSER	18.888	(.810)	20.059	(2.860)
AVGJOYO	.250	(.028)	.229	(.098)
AVGSENT	34.238	(2.412)	31.361	(10.977)
AVGCSTDY	.573	(.054)	.623	(.139)
JOYO	.259	(.438)	.243	(.429)
JD	.342	(.474)	.095	(.294)
ADJSEV	1.947	(.959)	1.672	(1.033)

In line with my earlier arguments on the jurisdictional context of legal decision making, separate multivariate models are presented for NYC and non-NYC counties. Table 5.13 further displays descriptive statistics for the variables in the NYC and non-NYC multivariate models. In contrast to non-NYC counties, NYC counties produced a higher percentage of black juveniles and a

higher proportion of arrests involving juveniles with prior designated felonies. In terms of the dependent variable, it should be noted that the mean seriousness of arrests is higher in non-NYC counties, 20.3 compared to 19.1 in NYC counties.

Jurisdictional upstream and downstream decision-making differences were earlier mentioned but are again reflected in the means for NYC and non-NYC counties. These will be further discussed later in the chapter, when we move toward the adjudication stage of legal decision making.

In table 15.14 offender characteristics as well as jurisdictional and temporal context are significant predictors of the severity of offense charges. The gender and race of the juvenile are important predictors, while age and the juvenile's prior offense are not significant at the .05 level. As is the case in their bivariate relationships, the negative coefficient for race and positive coefficient for gender show that blacks and girls are charged on average with less serious, designated felony offenses than nonblacks (whites and hispanics) and girls.

The time of arrest and the county of jurisdiction are also significant indicators of arrest severity. Over time the severity of arrest increased, while larger jurisdictions charged juveniles with less serious offenses than smaller jurisdictions. Moreover, counties with higher conviction rates arrested juveniles for less serious offenses.

TABLE 5.14
REGRESSION ESTIMATES OF ARREST SERIOUSNESS
(NEW YORK STATE N=7,803)

<u>Variable</u>	<u>Coefficient</u>	<u>SE</u>	<u>T-Ratio</u>
AGE	-.178	.231	-.770
GENDER	2.374*	.487	4.875
RACE	-1.287*	.280	-4.594
PRIOR	.136	.422	.323
ARSTIME	.022*	.006	3.791
LNPOP	-.858*	.253	-3.394
AVGJOYO	-8.524*	2.898	-2.941
Constant	33.975		
R Square=	.01		

Note that in this and other tables * indicates statistical significance below the .05 level.

To test for specific interactions, I produced separate

degree of
time
No. observations - No. of juveniles

regressions for NYC and non-NYC counties. Table 5.15 shows that the temporal sequence of JO arrests is of greater importance in both NYC and non-NYC counties. However, county population and conviction rates are significant only in non-NYC counties. The effects of gender and rate are significant only in NYC counties.

TABLE 5.15
REGRESSION ESTIMATES OF ARREST SERIOUSNESS
(NEW YORK CITY COUNTIES N=6,722)

<u>Variable</u>	<u>Coeff.</u>	<u>SE</u>	<u>T-Ratio</u>
AGE	- .149	.246	- .606
GENDER	2.508*	.522	4.806
RACE	-1.248*	.300	-4.155
PRIOR	- .019	.430	- .045
ARSTIME	.013*	.006	2.046
LNPOP	.318	.472	.673
AVGJOYO	10.391	5.779	1.798
Constant	12.223		

R Square=.01

REGRESSION ESTIMATES OF ARREST SERIOUSNESS
(NON-NEW YORK CITY COUNTIES N=1081)

<u>Variable</u>	<u>Coeff.</u>	<u>SE</u>	<u>T-Ratio</u>
AGE	- .374	.659	- .568
GENDER	1.421	1.341	1.060
RACE	-1.210	.789	-1.533
PRIOR	2.899	1.791	1.619
ARSTIME	.071*	.017	4.263
LNPOP	-1.302*	.528	-2.463
AVGJOYO	-14.386*	3.962	-3.631
Constant	43.110		

R Square=.04

6. Summary on the Determinants of Offense Severity

I started this chapter by pointing to the importance of official statistics as an indicator of how juveniles are assigned criminal responsibility for their offenses. I draw on the DCJS data to determine the statistical significance of offense, offender, and jurisdictional characteristics on an interval measure

of offense severity. Based on the legal categories, I noted that the distribution of arrests is skewed towards the most serious types of designated felony offenses. But seriousness, I found, is correlated with the characteristics of arrested JOs and the jurisdictional context of arrests.

While the relationship between gender and offense seriousness may mirror the actual incidence of crime in that males are reported to have higher rates of violence, the observed relationship between race and the seriousness of JO arrests requires a much more complex explanation. It is difficult to suggest that black juveniles are responsible for less violent offenses. Rather, the tabulated data suggest that the police are quicker to assign criminal responsibility to black juveniles for less serious violent offenses. White juveniles need to commit a more serious, designated felony offense to qualify initially as a juvenile deserving of criminal responsibility. In other words, the minimum level of severity required to make a JO arrest is lower for black juveniles than it is for white juveniles.

Similarly, there is no reason to suggest that less serious, designated felony offenses are more likely to occur in Albany, and less likely to occur in Buffalo or Rochester. Rather, the jurisdictional data suggest that the initial assignment of criminal responsibility is not merely a function of the offensive behavior of juveniles, but a loosely coupled criminal justice system in which the assignment of criminal responsibility to juveniles is in part organizationally driven. The organizational context I identified in terms of the county of jurisdiction and the month of arrest. In particular, a legal change in the county's cost of institutional placement appeared to have produced a decline in the frequency of arrests and an increase in the mean seriousness of arrests.

To conclude, part of the reason for arresting juveniles as JOs is not just the seriousness of designated felony offenses. Arrests are related to the juvenile's personal characteristics as well as to the jurisdictional and temporal context of criminal justice.

decision making. The initial assignment of criminal responsibility in the form of a designated felony arrest is not just a product of the legal requirements of the JO law.

B. Adjudicating Arrested JOs

The next major stage in the criminal justice process is the decision to convict, remove, or dismiss those JOs arrested for designated felony offenses. Till the point of adjudication, juveniles are only charged with designated felony offenses. The ultimate adjudication of guilt is preceded by several important steps in the criminal justice process. Technically, there must be an arraignment in which a decision is made to detain or release the juvenile. Moreover, the juvenile must be indicted by a grand jury for one or more designated felony offense.

In the negotiated order of criminal justice, decisions about the appropriate penalties for crime are made by officials in their routine handling of cases. Criminal justice officials have a good idea as to the "going rate" for the offense and offender based on the severity of the offense and the offender's prior history. As Lynn Mather (1979) observes in "dead bang" cases, the decision to convict and to incarcerate offenders is made early in the criminal justice process.

As is the case with adult offenders, JOs may be diverted at any point from the criminal justice process. The JO law presents criminal justice officials with an additional legal avenue in the form of removal to juvenile court. However, a formal removal to juvenile court technically requires criminal justice officials to consider the degree to which arrested juveniles are criminally responsible for an offense. Eligible juveniles may be removed to the Juvenile court for a designated felony offense based on their role in a group offense or the degree to which they are amenable to treatment. Recall that for felonies that are designated B and C felonies, such as robbery and burglary, only the prosecutor's stated reason for removal is required. For A felonies, such as murder and kidnapping, both the prosecutor and the criminal court

judge must concur on the stated reason for removal.

I coded a juvenile as "removed" to juvenile court if the DCJS data indicated that the juvenile was "transferred," "removed," or "disposed in juvenile court." A consensus of official opinion warranted the combination of these DCJS categories, although it is possible that some cases defined as disposed in juvenile court did not involve designated felony charges.

But the formal removal to the juvenile court only refers to the population that is legally diverted from the criminal justice system to the juvenile justice system for designated felony offenses. There is an informal route back to juvenile court through the dismissal of a designated felony offense charge. So a segment of JO arrests that fall into the dismissal category still may have involved some formal processing in juvenile court. If prosecutors reduced juveniles' offenses to non-designated felonies, then they are technically acts of delinquency for which juveniles are not criminally responsible.

Based on the DCJS data, I combined the dismissal category to incorporate the following adjudication codes: acquitted, dismissed, no bill, DA declined to prosecute, not arraigned, not considered by grand jury, no jurisdiction, declined prosecution. The coding of case outcomes based on these adjudication codes indicates that the eligible juveniles were not convicted in criminal court nor removed to the Juvenile court.

Conviction in criminal court is based on the juvenile's adjudication as either a Youthful Offender (YO) or JO. Recall that a 1979 amendment to the JO law made juveniles eligible for YO status. Persons between the ages of 16 and 21 prior to the JO law were eligible for YO status in criminal court. The 1979 amendment further reduced that eligibility to JO offenses.

YO status allow the convicted juvenile to receive probation or a reduced sentence of 1 1/3 to 4 years imprisonment. In contrast to YO status, the conviction of a juvenile solely as a JO produces a public criminal record and longer minimum and maximum periods of incarceration.

Table 5.16 shows that nearly one-quarter of all juveniles arrested for designated felony offenses were convicted in criminal court. This one conviction out of four arrests is based on YO and JO convictions. The proportion of arrested juveniles convicted in criminal court is substantially lower than the proportion of arrested adults convicted in criminal court for the same kinds of offenses. According to DCJS data for the same period (M. Cohen, 1992b), approximately 60% of adults arrested in New York State for A, B, and C felonies were convicted in criminal court.

TABLE 5.16
ADJUDICATION OF JUVENILE OFFENDER ARRESTS

	<u>Percent</u>	<u>Frequency</u>
Dismissed	44.7	4,442
Removed to Family	30.5	3,026
Youthful Offender	15.6	1546
Juvenile Offender	9.3	923
Total	100.0	9937

Still a large percent (45%) of juveniles arrested for designated felony offenses see their cases dismissed from the criminal justice system (table 5.16). The 31% that are removed to New York's juvenile justice system are still subject to legal sanctions for their offenses. The remaining 25% of arrested juveniles are convicted in criminal court, but mostly as YOs. They are still considered as JOs but they have the additional protection of YO status. Only a small percentage of arrested juveniles (9%) are actually convicted in criminal court to the extent that is initially mandated by the JC law.

In the cross-tabulated tables to follow, I consider adjudication as both a categorical and an ordinal measure of criminal responsibility. As a categorical measure, I assess the probability of conviction in criminal court, regardless of whether the juvenile actually was found guilty in the criminal court as either a JO or a YO. As an ordinal measure of criminal

responsibility, I am concerned with the degree to which the formal legal labels are applied to eligible juveniles. I assume that the YO label is less severe than the JO label; that removal to juvenile court is less severe than conviction in court; and that dismissal is the least severe type of adjudication.

Recall that eligible juveniles are charged with a multitude of offenses and their adjudication is specific to their offense charges. Also bear in mind that in negotiating a plea of guilty officials may convict a juvenile for an offense charge that is less than the most serious offense. Therefore, I reordered the DCJS record to take into account the most severe type of adjudication independent of the severity of offense charges. For example, if a juvenile was convicted in criminal court for a robbery in the second degree while the juvenile's arrest charges for robbery in the first degree were dismissed, I counted the juvenile's arrest as a conviction in criminal court.

1. Offender Characteristics:

Table 5.17 shows that younger juveniles are more likely to have their cases removed to juvenile court; 34% of juvenile between the ages of thirteen and fourteen and a half are removed to juvenile court compared to 29% of older juveniles. The relationship between age and adjudication is weak in part because juveniles arrested at the age of thirteen are charged only for homicide offenses. Still the probability of convicting juveniles as JOs increased to 11% for the oldest age category from 7% for those in the youngest age category.

TABLE 5.17
TYPE OF ADJUDICATION BY AGE CATEGORY

	<u>Dismissed</u>	<u>Removed</u>	<u>Youthful Offender</u>	<u>Juvenile Offender</u>	<u>Total</u>
13 to 14.5					
Number	1342	1035	471	232	3080
Percent	43.6	33.6	15.3	7.5	100.0*
14.5 to 15.5					
Number	1199	802	498	242	2741
Percent	43.7	29.3	18.2	8.8	100.0
15.5 & Older					
Number	1404	928	502	353	3187
Percent	44.1	29.1	15.8	11.1	100.0
Total					
Number	3945	2765	1471	827	9008
Percent	43.8	30.7	16.3	9.2	100.0

* Note that percents are based on row percents as indicated by the total percent category. In this and the following tables the direction in which tables are percentage is indicated by the total percent of 100.

Table 5.18 shows that boys are nearly three times as likely to be convicted as JOs as girls, 9.8% compared to 3.4%. When YO and JO status is combined only 16% of girls are convicted in criminal court compared to 26% of boys. Part of the variation in conviction rates can be attributed to the higher proportion of girls removed to the juvenile court, 36% to 30%.

TABLE 5.18
TYPE OF ADJUDICATION BY GENDER

	<u>Dismissed</u>	<u>Removed</u>	<u>Youthful Offender</u>	<u>Juvenile Offender</u>	<u>Total</u>
GIRLS					
Number	350	263	94	25	732
Percent	47.8	35.9	12.8	3.4	100.0
BOYS					
Number	4092	2763	1452	898	9205
Percent	44.5	30.0	15.8	9.8	100.0
Total					
Number	4442	3026	1546	923	9937
Percent	44.7	30.5	15.6	9.3	100.0

The racial characteristics of juveniles are tabulated by type of adjudication in Table 5.19. Despite the fact that blacks are arrested for less serious offenses, they are more likely than whites to be adjudicated as JOs (10% compared to 7%). However, the percent of hispanics adjudicated as JOs is equal to that of blacks. There is no difference in the probability of YO status by the race of eligible juveniles.

Although black and hispanic juveniles are more likely to have their cases removed to Juvenile court, whites are more likely to have their cases dismissed. Among eligible white juveniles charged with designated felonies, 52% are dismissed compared to 43% for black and hispanic juveniles. Blacks are subject to lower dismissal rates despite the fact that they are charged with less serious designated felonies.

TABLE 5.19
TYPE OF ADJUDICATION BY RACE

	<u>Dismissed</u>	<u>Removed</u>	<u>Youthful Offender</u>	<u>Juvenile Offender</u>	<u>Total</u>
White					
Number	780	384	239	110	1513
Percent	51.6	25.4	15.8	7.3	100.0
Black					
Number	2942	2131	1055	648	6776
Percent	43.4	31.4	15.6	9.6	100.0
Hispanic					
Number	680	496	245	152	1573
Percent	43.2	31.5	15.6	9.7	100.0
Total					
Number	4402	3011	1539	910	9862
Percent	44.6	30.5	15.6	9.2	100.0

Analysis by prior offense, table 5.20, shows that eligible juveniles with at least one previous arrest face a substantially greater probability of being adjudicated as JOs; 19% of juveniles with a prior arrest are convicted as JOs compared to 7% without any prior offense. Juveniles with a prior arrest are just as likely to receive YO status as those without a prior arrest, in part, because the prior arrests did not necessarily result in a conviction in criminal court; that is, only a prior arrest that results in conviction disqualifies juveniles for YO status.

Table 5.20 shows that a large percent of juveniles, 41%, are still dismissed from the criminal justice system and are not formally transferred to juvenile court despite repeated felony arrest. Recall that our measure of prior offense is based on prior arrests and not convictions in criminal court.

TABLE 5.20
TYPE OF ADJUDICATION BY PRIOR

	<u>Dismissed</u>	<u>Removed</u>	<u>Youthful Offender</u>	<u>Juvenile Offender</u>	<u>Total</u>
No Prior					
Number	3640	2453	1237	590	7920
Percent	46.0	31.0	15.6	7.4	100.0
Prior					
Number	374	207	148	176	905
Percent	41.3	22.9	16.4	19.4	100.0
Total					
Number	4014	2660	1385	766	8825
Percent	45.5	30.1	5.7	8.7	100.0

Table 5.21 shows a direct relationship between type of designated felony and the probability of conviction in criminal court as a JO. One-third of juveniles are convicted in criminal court as JOs for A felonies, compared to 9% for B felonies, and 5% for C felonies.

TABLE 5.21
TYPE OF ADJUDICATION BY TYPE OF FELONY CHARGE

	<u>Dismissed</u>	<u>Removed</u>	<u>Youthful Offender</u>	<u>Juvenile Offender</u>	<u>Total</u>
C Felony					
Number	1548	1181	329	152	3210
Percent	48.2	36.8	10.2	4.7	100.0
B Felony					
Number	2662	1737	1158	571	6128
Percent	43.4	28.3	18.9	9.3	100.0
A Felony					
Number	232	108	59	200	599
Percent	38.7	18.0	9.8	33.4	100.0
Total					
Number	4442	3026	1546	923	9937
Percent	100.0	100.0	100.0	100.0	100.0

Yet table 5.21 shows that more than half of A felonies are removed to the juvenile court or dismissed from the criminal justice process. Recall that A felonies consist of murder and rape arrest charges.

2. Jurisdictional and Temporal Context

The temporal sequence of adjudications is presented in table 5.22. The percent convicted in criminal court peaked in 1982 when 35% of arrested juveniles were adjudicated either as YOs or JOs. The percent of juveniles adjudicated as YOs rose steadily from 11% in 1979 to 22% in 1982, and then declined to 16% in 1984. Similarly, the percent of juveniles adjudicated as JOs rose from 8% in 1979 to 13% in 1982, and then declined to 7% in 1984.

The rise and decline by year in the percent convicted corresponds closely to the 1982 administrative change in counties' cost of incarceration. As legal officials became increasingly aware of the reduced cost of incarcerating a juvenile through criminal court, JO convictions in criminal court increased. Once the state increased the county's cost of incarceration for criminally responsible juveniles, the conviction of JOs declined. So the decline and rise in the cost of incarcerating juveniles became a possible real reason for assigning criminal responsibility to a segment of eligible juveniles.

TABLE 5.22
TYPE OF ADJUDICATION BY YEAR

	<u>Dismissed</u>	<u>Removed</u>	<u>Youthful Offender</u>	<u>Juvenile Offender</u>	<u>Total</u>
1978					
Number	265	242	45	44	596
Percent	44.5	40.6	7.6	7.4	100.0
1979					
Number	703	597	171	129	1600
Percent	43.9	37.3	10.7	8.1	100.0
1980					
Number	714	475	196	148	1533
Percent	46.6	31.0	12.8	9.7	100.0
1981					
Number	623	519	331	184	1657
Percent	37.6	31.3	20.0	11.1	100.0
1982					
Number	553	391	323	187	1454
Percent	38.0	26.9	22.2	12.9	100.0
1983					
Number	552	328	248	138	1266
Percent	43.6	25.9	19.6	10.9	100.0
1984					
Number	659	339	200	89	1287
Percent	51.2	26.3	15.5	6.9	100.0
1985					
Number	373	135	32	4	544
Percent	68.6	24.8	5.9	.7	100.0
Total					
Number	4442	3026	1546	923	9937
Percent	44.7	30.5	15.6	9.3	100.0

3. Jurisdictional Downstream Consequences

Previously, in table 5.14, I showed that the county's average conviction rate is inversely related to the severity of arrest. For example, Albany recorded the lowest mean seriousness of arrest yet the highest rate of conviction. Similarly, table 5.23 shows

that Albany's high rate of conviction translates into a high probability of incarceration and a relatively lengthy mean sentence length. The tightly coupled criminal justice process noted in Albany's initial case processing appears to continue past the point of initial arrest and into the sentencing of convicted juveniles. Note that mean sentence length is based on the average minimum and maximum date of sentence transformed into expected months served⁷.

TABLE 5.23
ADJUDICATION AND DISPOSITION RATES BY LARGE JURISDICTIONS

<u>New York City Counties</u>	<u>Removal^a</u>	<u>Conv.^b</u>	<u>Custody^c</u>	<u>Sentence^d</u>
Brooklyn	.42	.23	.52	32.52
Queens	.37	.22	.60	30.97
Manhattan	.22	.27	.57	36.71
Bronx	.31	.29	.66	37.10
Richmond	.12	.19	.68	32.13
<u>Non-New York City Counties</u>				
Nassau	.04	.29	.66	29.71
Suffolk	.13	.23	.49	32.36
Erie	.08	.07	.63	46.40
Westchester	.02	.24	.58	19.09
Monroe	.11	.12	.62	18.20
Onondaga	.09	.32	.61	36.24
Albany	.12	.39	.91	42.90
Other Small Counties	.14	.18	.63	34.11

^a Rate of Removal to Juvenile Court

^b Rate of Conviction in Criminal Court

^c Rate of Custody for JOs convicted in Criminal Court

^d Jurisdiction's average length of sentence

Within the 12 largest counties, the downstream consequences of adjudication in the form of disposition appears unrelated to conviction or removal. For example, Erie County has the lowest conviction rate but the highest average mean length of sentence. Another county in the Western part of New York State, Monroe County (Rochester) produced next to the lowest conviction rate (.12) and the lowest average length of sentence (18.20).

In table 5.23 arrested juveniles appear more likely to face formal adjudication within the densely populated counties of New York City. In Brooklyn, Queens, Manhattan and the Bronx more than half the arrested juveniles are either convicted in criminal court

or removed to juvenile court. Except for Albany, non-NYC counties produced dismissal rates that were greater than 50% of JO arrests.

Criminal justice decision making may be more tightly coupled in NYC because of the much large number of JOs. Decision making is not necessarily more severe but more routine for NYC legal officials. As a consequence, the routine handling of JOs by criminal justice officials may have produced higher rates of adjudication in NYC. In contrast, non-NYC criminal justice officials may simply lack the experience for routinely handling JO cases. Criminal justice officials in smaller counties may more routinely dismiss the majority of eligible juveniles in a more loosely coupled criminal justice system.

4. Multivariate Analysis of Adjudication

I now will consider both the determinants of a nominal and ordinal level measure of adjudication. As a nominal level measure, I am concerned with the determinants of convicting juveniles in criminal court either as JOs or YO. As an ordinal level measure, my dependent variable is the severity of adjudication on a scale of 0 to 3. Recall that the YO label (coded 2) is less severe than the JO label (coded 3), and that removal (coded 1) to juvenile court is less severe than conviction in criminal court. Dismissal is the least severe type of adjudication (coded 0).

The regression model for New York State (Table 5.24) shows that the age and gender of juveniles are significantly related to the severity of adjudication. As noted in the cross-tabulated data, the severity of adjudication increases with the age of juveniles. The larger regression coefficient for gender reflects a difference in the scale of measurement rather than its relative importance. The direction of the coefficients suggests that older boys are significantly more likely to receive more severe adjudication than younger girls. Surprisingly, the bivariate relationship noted between adjudication and race disappears in the multivariate model once other important variables are statistically controlled.

Next offense seriousness and prior arrest variables are strongly related to the severity of adjudication. Note that the coefficient for the seriousness of the offense is nearly 13 times its standard error. Prior arrest is also a highly significant determinant of adjudicatory severity.

The temporal context is also highly significant, in that, over time a decreasing number of juveniles were severely adjudicated. As noted earlier, the decline in formal adjudication appears linked to a shift in legislation that in 1983 mandated an increase in the county's cost of JO incarcerations.

The jurisdictional determinants of adjudication suggest that juveniles in larger counties are more likely to face formal adjudication than in smaller counties. This confirms the earlier bivariate relationship between formal adjudication in NYC and non-NYC counties. Also important in predicting severity is the upstream and downstream consequences of adjudication. Counties with a lower, average severity of arrests are more severe in their adjudication of JOs than counties with higher severity of arrests. Moreover, counties with higher incarceration rates are more likely to adjudicate more severely eligible JOs than counties with lower incarceration rates. Finally, the downstream consequences of adjudication continue in the form of higher mean sentencing rates.

TABLE 5.24
REGRESSION ESTIMATES OF ADJUDICATION SEVERITY
(NEW YORK STATE N=7,803)

<u>Variable</u>	<u>Coeff.</u>	<u>S.E.</u>	<u>T-Ratio</u>
AGE	.056*	.019	2.874
GENDER	.094*	.041	2.304
RACE	.034	.024	1.450
SERIOUS	.012*	.001	12.855
PRIOR	.264*	.035	7.466
ARSTIME	-.003*	.001	-5.116
LNPOP	.127*	.027	4.611
AVGSER	-.037*	.009	-4.100
AVGCSTDY	.488*	.212	2.302
AVGSENT	.007*	.003	2.717
CONSTANT	-.822		
R Square	.04		

Significant interaction effects emerge (Table 5.25) when separate regression models are computed for NYC and non-NYC counties. Among NYC counties, the only personal characteristic to have an effect on severity of adjudication is the juvenile's age; in non-NYC counties, age, gender, and race are significant determinants of adjudication severity. However, a t-test of the difference in the unstandardized age coefficients for NYC and non-NYC counties is not statistically significant ($b=.097$, $t=-.346$).

By offense-related characteristics, the severity of offense is a more important predictor of adjudication in NYC counties than in non-NYC jurisdictions ($b=-.003$, $t=2.52$). Moreover, prior offense is not significant in non-NYC counties, while it is in NYC counties. This again suggests that the identification and quantity of JOs lead to more routine legal processing in densely populated NYC counties.

In terms of the temporal context of criminal justice decision making, time has a positive effect on adjudication in non-NYC counties while it has a negative effect in NYC counties ($b=.007$, $t=7.0$). The size of the county is also related in opposite ways for NYC and non-NYC counties ($b=.407$, $t=-5.0$). In non-NYC counties, smaller jurisdictions adjudicate juveniles more severely than large jurisdictions. Again this reflects the difference between Erie County, a large non-NYC county which rarely adjudicates eligible juveniles as JOs, and a smaller county such as Albany which nearly always adjudicates eligible juveniles as JOs. Similarly, non-NYC counties seem to be less influenced by the average severity of arrests than is the case in NYC counties ($b=-.149$, $t=-6.21$). The difference between NYC and non-NYC counties emerges in the downstream consequences of conviction; the average sentence length matters more in NYC than it does in non-NYC counties.

TABLE 5.25
REGRESSION ESTIMATES OF ADJUDICATION SEVERITY
(NEW YORK CITY COUNTIES N=6,722)

<u>Variable</u>	<u>B</u>	<u>SE</u>	<u>T-Ratio</u>
AGE	.042*	.021	2.026
GENDER	.065	.044	1.482
RACE	.017	.025	.670
SERIOUS	.013*	.001	12.284
PRIOR	.265*	.036	7.373
ARSTIME	-.004*	.001	-6.880
LNPOP	.207*	.085	2.449
AVGSER	.074*	.025	2.984
AVGCSTDY	-.370	.621	-.597
AVGSENT	.023*	.006	3.683
Constant	-3.809*		

R=.05

REGRESSION ESTIMATES OF ADJUDICATION SEVERITY
(NON-NEW YORK CITY COUNTIES N=1,081)

<u>Variable</u>	<u>B</u>	<u>SE</u>	<u>T-Ratio</u>
AGE	.139*	.053	2.637
GENDER	.212*	.108	1.975
RACE	.167*	.064	2.590
SERIOUS	.010*	.002	3.964
PRIOR	.162	.143	1.130
ARSTIME	.003*	.001	2.394
LNPOP	-.200*	.047	-4.275
AVGSER	-.075*	.012	-6.264
AVGCSTDY	.075	.279	.269
AVGSENT	.006	.003	1.612
Constant	2.890	1.097	2.635
R Square	.07		

5. Determinants of Removal to Juvenile Court

Logistic models (5.26 & 5.27) of removal to juvenile court show a different picture for NYC and non-NYC counties. For New York State, age and gender are significant correlates of the likelihood of removal. Younger juveniles are more likely to be moved than older juveniles. Girls are more likely to be removed, controlling for other important offense and jurisdictional variables than boys.

The log odds coefficient shows that boys have a 29% lower likelihood, on average, of being removed to juvenile court ($e^{-.342} - 1 = -29\%$).

Offense seriousness and prior offense are all important determinants of the removal process. In the expected direction, juveniles charged with more serious offenses or who have a prior offense face a lower likelihood of having their cases removed to juvenile court.

The temporal context is strongly correlated with removal in that waiver to juvenile court was increasingly a less viable option. Recall that for the entire population of arrested JOs, the probability of removal to New York's juvenile court is .30. However, the determinants of removal appear less clearly linked to the personal characteristics of juveniles than to the county of jurisdiction. This is reflected in the positive coefficient for the logged population of county of jurisdiction. The t-value is more than fourteen times its standard error, reflecting the degree to which county of jurisdiction is an important determinant of removal to juvenile court. Indeed, the descriptive statistics shows that for NYC counties, 34% of arrested juveniles are removed compared to 10% of juveniles adjudicated in non-NYC counties.

The organizational context of legal decision making again emerges in the removal process in that both upstream and downstream jurisdictional consequences are significant. The average seriousness of arrests in a county has a positive influence on the removal process so that each increase on the interval scale of mean severity of arrests raises the likelihood of removal by 13% ($e^{.127} - 1$). The county's average rate of incarceration has an upstream effect on the probability of removal. Counties with higher incarceration rates tend to remove a larger proportion of eligible juveniles to juvenile court.

TABLE 5.26
 LOGISTIC ESTIMATES OF REMOVAL TO JUVENILE COURT
 (NEW YORK STATE, N=7,803)

<u>Variable</u>	<u>Coefficient</u>	<u>Std. Error</u>	<u>t-ratio</u>
AGE	- .173*	.046	-3.781
GENDER	- .342*	.093	-3.675
RACE	- .009	.056	- .164
SERIOUS	- .021*	.003	-8.298
PRIOR	- .490*	.089	-5.498
ARSTIME	- .011*	.001	-9.315
LNPOP	1.681*	.117	14.313
AVGSER	.127*	.027	4.717
AVGSENT	.007	.008	.917
AVGCSTDY	2.464*	.731	3.372
Constant	-25.002		
Log-Likelihood	-4490.463		

In separate logistic models for NYC counties and non-NYC counties, only gender among the personal and offense related characteristics of JOs appears to make a statistically significant contribution to the likelihood of removal in non-NYC counties. Moreover, only the temporal context of removal is significant in non-NYC jurisdictions. Unlike NYC counties, the temporal sequence in non-NYC counties suggests an increase in the use of removal.

Thus it appears that a more tightly coupled system of waiver is at work in NYC jurisdictions where offense characteristics are important predictors of removal. In non-NYC jurisdictions other non-specified variables are determining criminal justice decision making.

TABLE 5.27
LOGISTIC ESTIMATES OF REMOVAL TO JUVENILE COURT
(NEW YORK CITY COUNTIES, N=6,722)

<u>Variable</u>	<u>Coefficient</u>	<u>Std. Error</u>	<u>t-ratio</u>
AGE	- .187*	.048	-3.876
GENDER	- .314*	.099	-3.170
RACE	- .033	.059	- .555
SERIOUS	- .023*	.003	-8.589
PRIOR	- .565*	.092	-6.171
ARSTIME	- .014*	.001	-10.766
LNPOP	.328	.254	1.290
AVGSER	.526*	.060	8.708
AVGSENT	- .077*	.018	-4.350
AVGCSTDY	-6.198*	1.514	-4.093
Constant	-4.919		
Log-Likelihood	-4,317.293		

LOGISTIC ESTIMATES OF REMOVAL TO JUVENILE COURT
(NON NYC-COUNTIES, N=1,081)

<u>Variable</u>	<u>Coefficient</u>	<u>Std. Error</u>	<u>t-ratio</u>
AGE	- .039	.182	- .214
GENDER	- .669*	.304	-2.201
RACE	- .139	.222	- .628
SERIOUS	- .011	.009	-1.208
PRIOR	.161	.494	.326
ARSTIME	.019*	.0045	3.925
LNPOP	- .151	.158	- .956
AVGSER	.001	.039	.032
AVGSENT	.007	.012	.614
AVGCSTDY	.619	.929	.666
Constant	- .243		
Log-Likelihood	-326.997		

6. Determinants of Conviction in Criminal Court

Now I wish to consider the correlates of conviction in criminal court. Recall that 16% of girls were convicted in criminal court compared to 26% of boys. Table 5.28 shows that after controlling for other important variables the difference in the likelihood of conviction remains after controlling for other important variables in that boys have a 50% greater chance of being convicted in criminal court $[(e^{-.406}-1)]$. Similarly, older juveniles

face a greater likelihood of being convicted in criminal court even after controlling for their prior arrests and charge severity.

Still prior arrest and offense severity are the strongest correlates of removal. The coefficient for severity is more than twelve times its standard error. Similarly, the t-value for prior offense shows that the beta coefficient is more than seven times its standard error. The log odds ratio for prior offense shows that likelihood of a criminal conviction is increased by 78% for those with a prior offense. Although the month of arrest is not significant, the county's population, severity of arrests, and mean sentence length are significant determinants of the likelihood of a criminal court conviction. Larger jurisdictions tend to convict fewer arrested juveniles than smaller jurisdictions. On average jurisdictions with higher severity of arrests produce, lower conviction rates, while jurisdictions with longer average sentences produce higher conviction rates.

TABLE 5.28
LOGISTIC ESTIMATES OF CONVICTION IN CRIMINAL COURT
(NEW YORK STATE, N=7,803)

Variable	Coefficient	Std. Error	t-ratio
AGE	.187*	.048	3.911
GENDER	.406*	.111	3.630
RACE	.058	.058	1.007
SERIOUS	.026*	.002	12.114
PRIOR	.577*	.079	7.315
ARSTIME	.000	.001	.012
LNPOP	-.154*	.068	-2.280
AVGSER	-.126*	.023	-5.569
AVGCSTDY	.620	.520	1.192
AVGSENT	.016*	.007	2.413
Constant	-1.225		
Log-Likelihood	-4,308.364		

The jurisdictional context in which juveniles are assigned criminal responsibility for their offenses is further highlighted in separate logistic models for NYC and non-NYC counties (table 5.29). Recall that race was not an important predictor of conviction in criminal court for the entire state. However, when we

look at the effects of race on non-NYC counties alone, it is clear that it has a strong and significant effect. Blacks in non-NYC counties have a 45% greater likelihood of conviction in criminal court than whites after controlling for offense seriousness and the temporal and jurisdictional context of adjudication. The difference in the likelihood of conviction is not significant for NYC counties.

Table 5.29 also shows other differences in the characteristics of counties of jurisdiction and their likelihood of conviction in criminal court. In NYC counties larger boroughs such as Brooklyn convict more than smaller ones such as the Bronx and Richmond. On the other hand, smaller non-NYC counties, for example Albany, have higher conviction rates than larger counties, such as Erie. Other differences between NYC and non-NYC counties appear in the effects of upstream and downstream consequences of conviction in criminal court. The average length of sentence is significant only in NYC counties, while the average severity of arrests only affects the likelihood of conviction in non-NYC counties. Counties with severe arrests in non-NYC counties on average produce a greater likelihood of conviction in criminal court. This illustrates again the effects of small and large upstate counties such as Albany and Erie on the likelihood of conviction in criminal court.

TABLE 5.29
LOGISTIC ESTIMATES OF CONVICTION IN CRIMINAL COURT
(NEW YORK CITY COUNTIES, N=6,722)

<u>Variable</u>	<u>Coefficient</u>	<u>Std. Error</u>	<u>t-ratio</u>
AGE	.156*	.052	3.021
GENDER	.318*	.120	2.646
RACE	.046	.063	.737
SERIOUS	.028*	.002	11.755
PRIOR	.619*	.082	7.551
ARSTIME	-.001	.001	-.698
LNPOP	.490*	.237	2.069
AVGSER	-.088	.062	-1.413
AVGCSTDY	2.910	1.629	1.786
AVGSENT	.089*	.016	5.488
Constant	-14.450		
Log-Likelihood	-3711.729		

**LOGISTIC ESTIMATES OF CONVICTION IN CRIMINAL COURT
(NON-NYC COUNTIES, N=1,081)**

Variable	Coefficient	Std. Error	t-ratio
AGE	.395*	.130	3.029
GENDER	.767*	.308	2.488
RACE	.372*	.160	2.331
SERIOUS	.019*	.006	3.411
PRIOR	.212	.322	.657
ARSTIME	.004	.003	1.315
LNPOP	-.417*	.109	-3.825
AVGSER	-.187*	.033	-5.723
AVGCSTDY	-.448	.645	-.695
AVGSENT	.010	.009	1.105
Constant	.558		
Log-Likelihood			-599.789

7. Concluding the Real Reasons for Adjudicating JOs

The estimated effects of the independent variables and their interaction on adjudication first suggest that the insignificant effects of race in NYC counties may be a function of the relatively larger number of minorities working in its criminal justice system. Second, the effect of time and county indicates the degree to which officials became accustomed to the JO law. Non-NYC counties were able to improve their ability to use the JO law through its more formal adjudication gradually over time. Still the enforcement of the JO law by officials outside of NYC counties led to more serious designated felony arrests. However, I noted that some smaller counties such as Albany arrested juveniles for a broader range of designated felony offenses. In contrast, the bureaucratic procedures for processing a large number of arrested JOs in New York City counties produced a population of JOs charged with less serious, designated felony offenses. The increasing population of juveniles perceived as requiring more severe adjudications gradually declined over time as counties became increasingly aware of the high cost of JO status.

D. The Dispositions of Convicted JOs

The next major legal step after the conviction of offenders in criminal court is the determination of type and length of sentence. Essentially, judicial officials must ultimately decide the type of sentence in the form of either probation or incarceration. If juveniles are sentenced to a Division for Youth (DFY) institution, then judges must indicate a minimum and maximum period of incarceration. Although juveniles serve their initial sentences in a DFY facility, the JO law mandates that the facility be a maximum security institution. Moreover, juveniles can be transferred after their sixteenth birthday to an adult Department of Corrections (DOC) facility. If the juvenile's sentence extends past 21 years of age, then on the day of his or her twenty-first birthday the offender must be transferred to a DOC facility.

In the following analysis, I again wish to see how offense, offender, and jurisdictional characteristics relate to the likelihood of convicted juveniles receiving a sentence of imprisonment. Are the race, gender, and age of juveniles more important determinants of their probability of imprisonment than the county and time of arrest? In particular, is the probability of imprisonment related to the upstream and downstream consequences of arrest and to the legal change producing a proportional increase in the county's cost of incarceration? To answer how the assignment of criminal responsibility to juveniles in criminal court is reproduced in the form of criminal punishment, I now focus on the population of arrested juveniles adjudicated as JOs. Note that the convicted population of juveniles includes juveniles who are also officially designated as Youthful Offenders.

1. Personal Characteristics

Sentences of incarceration are slightly higher among juveniles in the oldest age category, 60% over the age of fifteen and half are incarcerated compared to 55% and 57% in younger age categories (Table 5.30). However, recall that part of the population in the youngest age category can only be convicted of homicide; therefore, the risk of incarceration for thirteen year old is heightened by

the severity of their offenses.

TABLE 5.30
TYPE OF DISPOSITION BY AGE CATEGORY

	<u>Probation</u>	<u>Custody</u>	<u>Total</u>
13 to 14.5			
Number	295	385	680
Percent	43.4	56.6	100.0
14.5 to 15			
Number	321	392	713
Percent	45.0	55.0	100.0
15.5 & Old			
Number	327	490	817
Percent	40.0	60.0	100.0
Total			
Number	943	1267	2210
Percent	42.7	57.3	100.0

The bivariate relationship between gender and sentence type is again in the expected direction (Table 5.31). The majority (59%) of boys convicted in criminal court are incarcerated compared to only 39% of girls. This may reflect the fact that girls are more often charged with less serious designated felony offenses, and official perceptions that girls are more deserving of treatment, and, therefore, probation.

TABLE 5.31
TYPE OF DISPOSITION BY GENDER

	<u>Probation</u>	<u>Custody</u>	<u>Total</u>
GIRLS			
Number	70	45	115
Percent	60.9	39.1	4.8
BOYS			
Number	926	1335	2261
Percent	41.0	59.0	95.2
Total			
Number	996	1380	2376
Percent	41.9	58.1	100.0

Although white juveniles appeared similar to hispanic juveniles at earlier stages in the criminal justice process, hispanic juveniles are just as likely to be incarcerated as black juveniles (Table 5.32). The majority of white juveniles are sentenced to probation (52%), while the majority of convicted blacks and hispanics are incarcerated. Nearly 60% of black and hispanic juveniles are incarcerated compared to slightly less than 50% of whites. Recall that hispanic and white juveniles appeared to resemble each other more closely at the arrest and adjudication stage in terms of both their mean rate of severity and adjudication. At the stage of sentencing, the percent distribution of type of disposition by race indicates that hispanics and blacks have a similar risk of incarceration.

**TABLE 5.32
TYPE OF DISPOSITION BY RACE**

	<u>Probation</u>	<u>Custody</u>	<u>Total</u>
White			
Number	172	162	334
Percent	51.5	48.5	14.2
Black			
Number	667	981	1648
Percent	40.5	59.5	69.9
Hispanic			
Number	153	223	376
Percent	40.7	59.3	15.9
Total			
Number	992	1366	2358
Percent	42.1	57.9	100.0

As expected, the prior felony arrest of JOs and the severity of their felony charges are strongly related to the likelihood of incarceration (Table 5.33). Eighty percent of juveniles with a prior designated felony arrest were incarcerated compared to 52% without a prior arrest. In table 5.34 the percent of convicted juveniles incarcerated increased from 52% for C felonies to 87% for A felonies.

**TABLE 5.33
TYPE OF DISPOSITION BY PRIOR ARREST**

	<u>Probation</u>	<u>Custody</u>	<u>Total</u>
No Prior			
Number	843	915	1758
Percent	48.0	52.0	84.6
Prior			
Number	63	256	319
Percent	19.7	80.3	15.4
Total			
Number	906	1171	2077
Percent	43.6	56.4	100.0

TABLE 5.34
TYPE OF DISPOSITION BY FELONY CHARGE

	<u>Probation</u>	<u>Custody</u>	<u>Total</u>
C Felony			
Number	224	239	463
Percent	48.4	51.6	19.5
B Felony			
Number	741	930	1671
Percent	44.3	55.7	70.3
A Felony			
Number	31	211	242
Percent	12.8	87.2	10.2
Total			
Number	996	1380	2376
Percent	41.9	58.1	100.0

Table 5.35 shows that after the implementation of legislation in 1983 increasing a county's cost of incarcerating JOs, the percent receiving probation increased to a majority of the convicted JO population. Between 1982 and 1983, the percent of incarcerated juveniles decreased from 62% to 51%. This is convincing evidence that the temporal context of legal decision making is a real reason not only for assigning criminal responsibility to juveniles but also for ultimately mandating criminal punishment in the form of imprisonment.

TABLE 5.35
TYPE OF SENTENCE BY YEAR

	<u>Probation</u>	<u>Custody</u>	<u>Total</u>
1978			
Number	31	56	87
Percent	35.6	64.4	3.7
1979			
Number	112	178	290
Percent	38.6	61.4	12.2
1980			
Number	127	203	330
Percent	38.5	61.5	13.9
1981			
Number	195	302	497
Percent	39.2	60.8	20.9
1982			
Number	186	305	491
Percent	37.9	62.1	20.7
1983			
Number	180	187	367
Percent	49.0	51.0	15.4
1984			
Number	143	139	282
Percent	50.7	49.3	11.9
1985			
Number	22	10	32
Percent	68.8	31.3	1.3
Total			
Number	996	1380	2376
Percent	41.9	58.1	100.0

In the previous section on adjudication, I considered rates of incarceration and mean lengths of sentence for various counties of jurisdiction as an upstream consequence. I now limit the upstream relevance of incarcerating juveniles to the average length of sentence. Recall table 5.23 showed that Erie county had the lowest conviction rate but the highest mean length of sentence. This

suggests that the small proportion of eligible juveniles convicted in criminal court are subject to longer periods of incarceration. However, also recall that there is some variation in the intra-jurisdictional filtering and rubber-stamping of criminal justice officials. Again decision making appears tightly coupled in Albany where 91% of convicted JOs face incarceration in a DFY maximum security institution.

2. The Multivariate Analysis

I produced several logistic and regression models to disentangle the relative importance of offense, offender, and jurisdictional characteristics on dispositions. I now confine the analysis to the proportion of juveniles convicted in criminal court. Missing values further reduce the total population of convicted JOs to 1,988.

Descriptive statistics are presented in table 5.36. Note that I recoded the race variable to reflect its bivariate distribution with type of disposition. I combined hispanic and black juveniles to produce a nonwhite racial category. Also note that the temporal variable is now based on the month in which the 1983 cost sharing amendment was first implemented.

TABLE 5.36
DESCRIPTIVE STATISTICS FOR JUVENILES
CONVICTED IN CRIMINAL COURT
(NEW YORK STATE, N=1,988)

<u>Variable</u>	<u>Mean</u>	<u>S.Dev.</u>
AGE (14-19 range)	15.304	(.544)
GENDER (Boys 1)	.947	(.225)
RACE (Non-White 1)	.852	(.356)
SERIOUS (10-94; indep.)	21.948	(13.263)
PRIOR (Prior Arrest 1)	.155	(.362)
LAW (Arrests after 5/1/83=1)	.237	(.426)
LNPOP (10.95-14.62)	14.176	(.527)
AVGSER (16.85-32.67)	18.986	(1.262)
AVGSENT (12-80)	34.086	(4.464)
CUSTODY (Prison 1; dep.var.)	.535	(.499)
MAXSENT (1-144; dep.var.)	20.633	(25.785)

<u>Variable</u>	<u>NEW YORK CITY</u> (N=1,727)		<u>NON-NYC COUNTIES</u> (N=261)	
	<u>Mean</u>	<u>Stan.Dev.</u>	<u>Mean</u>	<u>Stan.Dev.</u>
AGE	15.301	(.541)	15.320	(.567)
GENDER	.946	(.226)	.950	(.216)
RACE	.875	(.331)	.707	(.460)
SERIOUS	21.951	(13.126)	21.927	(14.169)
PRIOR	.169	(.375)	.061	(.240)
LAW	.232	(.422)	.276	(.448)
LNPOP	14.305	(.311)	13.327	(.806)
AVGSER	18.928	(.865)	19.369	(2.653)
AVGSENT	34.558	(2.415)	30.958	(10.112)
CUSTODY	.521	(.500)	.625	(.485)
MAXSENT	20.127	(25.508)	23.984	(27.361)

3. Logistic Estimates of Incarceration

Among the personal characteristics of convicted JOs, table 5.37 shows that gender and race remain statistically significant predictors of custody sentences. For nonwhites, on average, the likelihood of incarceration is increased by 71% ($e^{.538}-1$) over that of whites. Gender is also a significant predictor of custody; in contrast to females, males face a 92% greater likelihood of incarceration ($e^{.654}-1$).

The strongest predictors of custody are offense related variables. For each incremental increase on an interval scale in the severity of offense, there is a 3.5% increase in the likelihood

of incarceration. Moreover, a prior designated felony offense increases the likelihood of incarceration by more than three times that of no prior felony arrest ($(e^{-1.483}-1)*100=340\%$).

Among the temporal and jurisdictional variables, the shift in the county's cost of incarcerating JOs, the county's population size, and the county's average length of sentence are significant predictors of incarceration. The shift in the county's cost decreased the likelihood of incarceration on average by 38%. For each incremental increase in the county's population, there is a 47% decline in the likelihood of incarceration. Jurisdictional differences emerge in that for each increase on an interval scale in the county's average length of sentence, there is a 2% increase in the sentencing of juveniles to custody.

TABLE 5.37
LOGISTIC ESTIMATES OF CUSTODY SENTENCE
(NEW YORK STATE, N=1,988)

<u>Variable</u>	<u>Coefficient</u>	<u>Std. Error</u>	<u>t-ratio</u>
AGE	-.019	.089	-.213
GENDER	.654*	.219	2.980
RACE	.538*	.139	3.863
SERIOUS	.034*	.004	8.139
PRIOR	1.483*	.153	9.693
LAW	-.474*	.114	-4.147
LNPOP	-.627*	.104	-6.027
AVGSER	-.057	.045	-1.281
AVGSENT	.023*	.011	1.987
Constant	7.738		
Log-Likelihood	-1245.460		

Separate logistic models for convicted juveniles in NYC and non-NYC counties show similar statistical patterns in the beta coefficients (Table 5.38). Although the effects of law and population size are not statistically significant based on a two-tail test at the .05 level, they are significant at the .10 level of probability. Note that the mean jurisdictional sentence length (AVGSENT) is significant in non-NYC counties, while it is not significant in NYC counties. Apparently, non-NYC counties incarcerate a higher proportion of those convicted and also incarcerate those juveniles for longer periods of time.

TABLE 5.38
LOGISTIC ESTIMATES OF CUSTODY SENTENCE
(New York City Counties, N=1,727)

<u>Variable</u>	<u>Coefficient</u>	<u>Std. Error</u>	<u>t-ratio</u>
AGE	.022	.096	.231
GENDER	.674*	.238	2.833
NONWHT	.499*	.158	3.156
SERIOUS	.033*	.004	7.342
PRIOR	1.465*	.156	9.394
LAW	-.494*	.124	-3.973
LNPOP	-.551*	.239	-2.310
AVGSER	.045	.064	.708
AVGSENT	.021	.030	.716
Constant	4.145	4.762	.870
Log-Likelihood	-1088.663		

LOGISTIC ESTIMATES OF CUSTODY SENTENCE
(UPSTATE COUNTIES, N=261)

<u>Variable</u>	<u>Coefficient</u>	<u>Std. Error</u>	<u>t-ratio</u>
AGE	-.241	.258	-.934
GENDER	.649	.616	1.054
NONWHT	.730*	.318	2.298
SERIOUS	.049*	.014	3.450
PRIOR	2.478*	1.065	2.327
LAW	-.533	.320	-1.665
LNPOP	-.328	.196	-1.669
AVGSER	-.128	.692	-.185
AVGSENT	.040*		
Constant	7.750		
Log-Likelihood	-148.642		

4. Sentence Length

The final step in the criminal justice process is determination of sentence length. Recall that the mean sentence length is based on minimum and maximum dates of incarceration transformed into expected months served. Table 5.39 presents the descriptive statistics for only those juveniles who were sentenced to prison for their designated felony offenses. The average expected length of sentence was 37 months for New York State. Observe that 75% of juveniles incarcerated in non-NYC counties are nonwhite compared to 90% in NYC counties. Also among the incarcerated proportion of juveniles, the percent with a prior offense in non-NYC counties is substantially lower than in NYC

counties (9% compared to 25%). Finally, the law variable reflects the percent incarcerated after the 1983 legislation increasing the county's cost of incarcerating JOs. In NYC counties, the act produced a 19% decrease in the incarceration rate, while it produced a 24% decrease in non-NYC counties.

TABLE 5.39
DESCRIPTIVE STATISTICS FOR JUVENILES SENTENCED TO INCARCERATION

Variable	New York (N=1,063)		NYC (N=900)		Non-NYC (N=163)	
	Mean	Std Dev	Mean	Std Dev	Mean	Std Dev
AGE	15.31	.54	15.32	.54	15.28	.55
GENDER	.96	.19	.97	.18	.96	.20
NONWHT	.88	.33	.90	.30	.75	.43
SERIOUS	24.21	15.17	24.22	15.13	24.15	15.45
PRIOR	.23	.42	.25	.43	.09	.29
LAW	.20	.40	.19	.39	.24	.43
LNPOP	14.13	.56	14.28	.31	13.27	.79
AVGSER	19.03	1.36	18.98	.90	19.28	2.76
AVGSENT	34.32	4.78	34.70	2.43	32.20	10.58
MAXSENT	37.08	24.65	36.97	24.35	37.66	26.31

By reducing the population of convicted juveniles to just over 1,000 sentenced to incarceration, the multivariate analysis of sentence length is confined to a highly selected pool of offenders. To reduce the possible influence of selection bias on the estimated regression parameters, I have followed the two stage least-square procedures that Berk (1983) recommends to control for the probability of offenders reaching the final stage of decision making. Length of imprisonment is not only a function of the linear combination of independent variables, but also of a "hazard rate" which estimates the risk of being incarcerated. Ordinary regression procedures which fail to take into account sample selection bias risk producing inconsistent estimates (see Hagan 1988, p.80). In the following analysis, I present both the corrected and uncorrected regression equations.

For New York State, table 5.40 shows that in both the corrected and uncorrected OLS estimates an incremental increase in the age of JOs raises on average the expected length of sentence by three months. However, the effect of race is in the opposite direction from that contained in models of decision making at

earlier stages in the criminal justice process. The negative coefficient for race indicates that whites on average receive longer sentences than minorities.

The possible impact of selection bias on parameter estimates is illustrated in the corrected and uncorrected regression estimates for race. In the corrected model, whites receive on average sentences that are five months longer than nonwhites. In the corrected model the number of months incarcerated increases to over eight months. This reflects the fact that a smaller population of convicted white juveniles receive a sentence of custody than convicted minority juveniles. White juveniles are sentenced for longer periods of time because they are less likely to be arrested and adjudicated as JOs.

The only contextual variable that is significant in both the corrected and uncorrected estimates of sentence length is the county's average length of sentence. The significance of this effect is not surprising. However, the lack of significance for the temporal context, the law variable, population size and average offense seriousness suggests that these variables are more likely to have an impact at earlier stages in the criminal justice process.

TABLE 5.37
 UNCORRECTED AND CORRECTED OLS
 ESTIMATES OF SENTENCE LENGTH
 (NEW YORK STATE, N=1063)

Variable	UNCORRECTED			CORRECTED		
	B	S.D.	T-Ratio	B	S.D.	T-Ratio
AGE	2.957*	1.222	2.421	3.034*	1.326	2.288
GENDER	4.344	3.543	1.226	-.130	5.623	-.023
NONWHT	-5.382*	2.054	-2.620	-8.598*	3.758	-2.288
SERIOUS	.778*	.044	17.547	.601*	.175	3.439
PRIOR	4.561*	1.614	2.826	-3.386	7.734	-.438
LAW	-1.670	1.670	-1.000	1.162	3.231	.360
LNPOP	-.677	1.293	-.524	2.881	3.654	.788
AVGSER	-1.365*	.522	-2.616	-.936	.703	-1.332
AVGSENT	.699*	.144	4.862	.580*	.194	2.991
Constant	-15.639			47.008		
LAMBDA				-17.156	16.160	-1.062

R Squared .26

Finally it is important to note in table 5.41 the determinants of sentence length for NYC and non-NYC counties. Among NYC counties, race is not significantly related to sentence length, while it is among non-NYC counties. Indeed, race is the only variable to have a significant effect on sentence length in non-NYC counties. In non-NYC counties, the longer sentences that whites receive seem related to greater filtering in criminal justice decision making at earlier stages in the legal process so that black and hispanic juveniles are more often adjudicated and incarcerated for less serious offenses. If whites are ultimately incarcerated for JO offenses, it is for the most serious types of designated felonies, resulting in longer periods of imprisonment.

TABLE 5.41
 UNCORRECTED AND CORRECTED OLS
 ESTIMATES OF SENTENCE LENGTH
 (NEW YORK CITY COUNTIES, N=900)

Variable	UNCORRECTED			CORRECTED		
	B	S.D.	T-Ratio	B	S.D.	T-Ratio
AGE	3.629*	1.310	2.769	3.523*	1.389	2.536
GENDER	7.197	3.875	1.857	3.403	6.425	.530
NONWHT	-2.287	2.395	-.955	-4.708	4.080	-1.154
SERIOUS	.796*	.047	16.818	.658*	.191	3.445
PRIOR	.570*	1.658	2.757	-1.804	8.674	-.208
LAW	-.737	1.840	-.401	1.632	3.699	.441
LNPOP	4.674	3.203	1.459	7.214	4.787	1.507
AVGSER	-.460	.842	-.547	-.666	.932	-.714
AVGSENT	.982*	.406	2.420	.888*	.446	1.990
Constant	-135.88			-143.59		
LAMBDA				-13.666	18.140	-.753
R Squared	.26					

UNCORRECTED AND CORRECTED OLS
 ESTIMATES OF SENTENCE LENGTH
 (NON-NEW YORK CITY COUNTIES, N=163)

Variable	UNCORRECTED			CORRECTED		
	B	S.D.	T-Ratio	B	S.D.	T-Ratio
AGE	-.735	3.348	-.220	.162	3.884	.042
GENDER	-8.372	8.885	-.942	-10.881	10.360	-1.050
NONWHT	-13.437*	4.307	-3.119	-16.299*	7.450	-2.188
SERIOUS	.650*	.125	5.222	.503	.337	1.492
PRIOR	6.558	6.448	1.017	-.250	15.850	-.016
LAW	-2.542	4.224	-.602	-.273	6.427	-.042
LNPOP	.711	2.666	.267	1.913	3.684	.519
AVGSER	-1.690*	.768	-2.200	-1.125	1.426	-.789
AVGSENT	.817*	.190	4.305	.663	.378	1.753
Constant	48.201			27.510		
LAMBDA				-12.903	27.160	-.475
R Square	.31					

VI. A FURTHER LOOK AT THE REAL REASON FOR INCARCERATING JUVENILES CONVICTED IN CRIMINAL COURT.

Recall that the DCJS data was limited to case processing decisions from 1978 to 1985. Although it was not possible to obtain individual level data for the period after 1985, DCJS and DFY provided me with aggregate level data on the rate of conviction and custody from 1978 to 1991. I now shift my analyses to these data and to DFY data on the rate of imprisonment for JOs.

Table 6.1 presents the rate of imprisonment for JOs in New York State based on arrests and the number of juveniles receiving a sentence of imprisonment. As might be expected with increasing prison capacity, the proportion of juveniles incarcerated increased from .04 in 1979 to .21 in 1983. This might be viewed as the period of institutional growth leading to the perception among officials of increased residential availability. It might also have led to an awareness that the cost of defining a juvenile in need of incarceration as a JO was less than the cost of defining the same individual as a juvenile delinquent.

In 1984, the probability of incarceration declined substantially, although the rate of arrests increased. By the time the cost of incarceration increased to 50% for New York State counties, the rate of incarceration plunged to 6% of juvenile designated felony arrests. The real reason then reflects the capacity of criminal justice officials to use available residential space. As the cost of residential space increased, the need to define JOs as deserving of imprisonment declined.

TABLE 6.1
RATE OF IMPRISONMENT FOR JUVENILES
ARRESTED FOR VIOLENT OFFENSES

Year	Arrests	Number prison	Rate im- prisoned	Average differ.
1979	1475	66	0.04	-0.07
1980	1444	166	0.12	0.01
1981	1568	218	0.14	0.03
1982	1388	254	0.18	0.07
1983	1190	253	0.21	0.10
1984	1180	157	0.13	0.02
1985	1173	152	0.13	0.02
1986	1171	142	0.12	0.01
1987	1046	107	0.10	-0.01
1988	1479	89	0.06	-0.05
1989	1826	127	0.07	-0.04
1990	1954	147	0.08	-0.03
Total	16,894.00	1,878.00	0.11	

The decline in the rate of incarceration for eligible JOs occurred despite no apparent change in the offense seriousness of arrest charges. Recall that designated felony arrests consist of violent categories of robbery, burglary, and other offenses. In table 6.2 the distribution of arrests by year are listed. They reveal that the slight increase in the rate of imprisonment in 1990 is due to a comparable one percent increase in the number of homicides.

TABLE 6.2
JUVENILE OFFENDER ARRESTS BY TYPE OF OFFENSE AND YEAR
(9/78-8/91)

YEAR	ASSAULT	HOMICIDE	SEXOFFS	KIDNAP	BURGLARY	ARSON	ROBBERY	ROW TOTAL
1978	27 * 5.0 **	23 4.2	26 4.8	1 0.2	20 3.7	18 3.3	429 78.9	544 100%
1979	35 2.4	40 2.7	153 10.4	2 0.1	64 4.3	39 2.6	1142 77.4	1475 100%
1980	49 3.4	74 5.1	111 7.7	0 0.0	61 4.2	34 2.4	1115 77.2	1444 100%
1981	45 2.9	93 5.9	113 7.2	3 0.2	67 4.3	32 2.0	1215 77.5	1568 100%
1982	44 3.2	75 5.4	114 8.2	1 0.1	60 4.3	26 1.9	1068 76.9	1388 100%
1983	44 3.7	72 6.1	107 9.0	3 0.3	54 4.5	20 1.7	890 74.8	1190 100%
1984	32 2.7	61 5.2	122 10.3	1 0.1	37 3.1	22 1.9	905 76.7	1180 100%
1985	58 4.9	64 5.5	161 13.7	1 0.1	21 1.8	27 2.3	841 71.7	1173 100%
1986	63 5.4	63 5.4	112 9.6	1 0.1	26 2.2	16 1.4	890 76.0	1171 100%
1987	77 7.4	67 6.4	107 10.2	2 0.2	32 3.1	24 2.3	737 70.5	1046 100%
1988	85 5.7	98 6.6	146 9.9	6 0.4	49 3.3	15 1.0	1080 73.0	1479 100%
1989	84 4.6	108 5.9	116 6.4	2 0.1	51 2.8	12 0.7	1453 79.6	1826 100%
1990	82 4.2	139 7.1	98 5.0	4 0.2	35 1.8	7 0.4	1589 81.3	1954 100%
1991	77 5.3	82 5.7	71 4.9	0 0.0	32 2.2	10 0.7	1170 81.1	1442 100%
NUMBER	802	1059	1557	27	609	302	14,524	18,880
TOTAL	4.2	5.6	8.2	0.1	3.2	1.6	76.9	100.0

** Percent

* Number

Finally, the increase in the number of JO arrests despite a decline in the risks of imprisonment did not reduce the incarcerated population of JOs in secure DFY facilities.

Admissions to DFY facilities increased rather than decreased over time despite a drop in sentences of incarceration. Table 6.3 shows that the number of juveniles placed in maximum security DFY institutions gradually increased over the last decade from 121 to 964 juveniels.

TABLE 6.3

ADMISSIONS TO N.Y. STATE JUVENILE INSTITUTIONS
1980-1990

Year	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
Secure	121	267	399	334	297	296	731	690	749	887	964
%	5.5	11.2	16.2	13.9	13.2	12.2	32.9	35.6	36.9	37.2	39.0
NonSec.	684	673	759	700	759	872	486	382	424	632	778
%	30.9	28.1	30.8	29.2	33.6	36.0	21.9	19.7	20.9	26.5	31.5
Comm.	1035	962	775	692	569	646	396	318	214	198	103
%	46.7	40.2	31.4	28.9	25.2	26.7	17.8	16.4	10.6	.08	.04
Vol.	375	490	532	669	631	610	606	546	641	669	625
%	16.9	20.5	21.6	27.9	28.0	25.2	27.3	28.2	31.6	28.0	25.3
Total	2215	2392	2465	2395	2256	2424	2219	1936	2028	2386	2470
%	100	100	100	100	100	100	100	100	100	100	100

The reason for the decline in judicial rates of incarceration and the rise in the DFY secure population of juveniles reflects another complex aspect of the waiver process. The practical, organizational reasons for criminal punishment persist past the point of disposition for convicted juveniles. A sentence of probation allows criminal justice officials to further track a segment of convicted JOs into prison despite an initial sentence of probation. According to officials it is very difficult for an offender not to violate probation for the typical five year period of time. Criminal justice officials know that defendants are likely to violate probation and will frequently agree to what initially seems like a milder sentence.

Defense attorneys also know that probation is not necessarily a milder disposition. They will often recommend to their clients

to "bite the bullet" with a one year sentence rather than to stay on probation for five years. According to one defense attorney, adult offenders are often "savy" enough to see that it is better to serve a minimum amount of time rather than to stay on probation for an extended sentence. However, few JOs have been in criminal justice system long enough to know the risks of probation, in that, they are likely to be easily violated and face incarceration in either a DFY or an adult correctional facility.

VII. ON EVALUATING WAIVER REFORMS

I found that the offense and offender characteristics are not the only reasons for New York's assignment of criminal responsibility to juveniles. Case processing decisions are related to a legal process in which the temporal and jurisdictional context of legal decision making are significant predictors of arrest, conviction, and type of disposition. Only part of the real reasons for assigning criminal responsibility to juveniles is a product of the JO law and the rules of legislative waiver.

My findings on the organizational context of legislative waiver decision making in New York support the view that criminal justice reforms work to satisfy a diverse set of official needs and interests. As a consequence, there is no simple measure of success or failure in my evaluation of waiver in New York. The negotiated order of juvenile and criminal justice requires that success be broadly defined to include a diversity of practical, organizational objectives. This point is emphasized by David Rothman's (1980) historical review of the creation and implementation of probation, parole, and correctional institutions. Institutionalized reforms survived despite repeated evidence of failure because

far from working against the new programs, the managers of the system (administrators, caretakers, custodians all) actively embraced them and used them for their own ends. A symbiotic alliance thus is forged between the reforms and the managers---a political force which allows programs to survive even if they seem abject failures (Rothman 1980, p.21).

In a similar vein, legislative waiver in New York satisfied a diverse set of bureaucratic interests. It met Albany's need for a tightly coupled criminal justice system in which juveniles were arrested, convicted, and incarcerated for a wide range of designated felony offenses. Legislative waiver also met Erie county's need for a loosely coupled criminal justice system in which only a small proportion of eligible juveniles were convicted for serious designated felony offenses.

I was also able to identify the diverse ways in which criminal justice officials use their discretion to assign criminal

responsibility to juveniles. Again the conviction of juveniles in Albany's criminal courts for less serious designated felony offenses supports Zimring's (1991:275) contention that in systems of legislative waiver "discretion can be removed only at the price of a rigidity that increases the punitive bite of legal policy toward youth crime." Similarly, higher arrest, conviction and incarceration rates for less serious designated felonies committed by minorities lend support to the warning by Thomas and Bilchick (1985:479) that criminal prosecutors may produce more uncontrolled discretionary decisions for juveniles than juvenile justice officials.

Still a more complete analysis would have led me to follow the case processing decisions of JOs removed to New York's juvenile court. Such data would have provided me with the data to compare the capacity of juvenile and criminal justice systems to convict and to incarcerate violent juveniles. Research is also needed on the recidivism of comparable juveniles who have been subject to the punishment objectives of juvenile and criminal courts. With sufficient confidentiality safeguards, future research studies need to trace decision making on the status of eligible juveniles across systems of juvenile and criminal justice.

Clearly, the practical, organizational circumstances of legal decision making requires the creation of last resort penalties for juveniles who commit serious violent offenses and for juveniles who repeatedly ignore the prior dispositions of juvenile court. What remains unclear is the degree to which waiver procedures are best able to meet various jurisdictional and temporal needs for last resort penalties in systems of juvenile and criminal justice.

Future research and evaluations of waiver decision making should continue to pursue the manner in which juveniles are assigned criminal responsibility for their behavior in a diverse set of legal settings. This requires researchers to go beyond the convenience of a single jurisdiction or a single stage in the criminal justice process. The sophisticated evaluation of waiver requires researchers to consider a diverse set of organizational

measures that broadly incorporate a diverse set of juvenile and criminal justice objectives. Without research that identifies the unique ways in which waiver policies and last resort penalties can be implemented, policy makers will continue to become vulnerable to legislation that is too often triggered by sensational acts of juvenile violence rather than the rational development of juvenile justice policies.

NOTES

1. Juvenile court and delinquency proceedings are one part of New York's family court. To be consistent with the language used in most other states to point to the court where delinquency is adjudicated, I refer in this report to New York's family court as "juvenile court."

2. In contrast to the 1978 JO law, the 1979 amendment was considered in a regular session of the Assembly and Senate. The amendment proposed several organizational changes which further centralized the JO legal process. The first set of provisions emphasized the amendment's due process orientation:

...require that the parent or other person legally responsible for the care of an alleged juvenile offender be notified of his arrest and the location of the facility in which he is being detained;

...provide that the testimony of an alleged juvenile offender at a removal inquiry may not be used against him except for impeachment purposes at a later proceeding;

...provide for a removal inquiry in the superior court, rather than the local criminal court, either before or after indictment, at the defendant's option;

...expressly provide that once a court has ordered removal of a juvenile offender case, no further proceedings may be had in any criminal court;

...set forth specific factors to be considered by the superior court in determining whether removal of a case to the Family Court is in the interests of justice;

...limit criminal responsibility of a juvenile offender for the crime of felony murder to cases in which the juvenile offender is criminally responsible for the underlying felony;

The second set of provisions solidified the power of criminal justice officials in deciding the fate of JOs. The prosecutor's discretion to determine the removal process for JOs charged with murder is expanded. Also, the Division for Youth is authorized to act in the same manner as adult correctional services to determine whether to incarcerate JOs in local jails. And finally, the state's criminal justice system is required to collect information on the arrest process for JOs:

... provide that the district attorney may recommend the acceptance of a plea by a 13 year-old juvenile offender charged with murder in the second degree to a designated

felony listed in Section 712 (h) of the Family Court Act and removal of the case to the Family Court;

... authorize the Division for Youth to approve, on a case by case basis, the detention of an alleged juvenile offender in a local jail, provided that the Division states its reasons for such approval;

... require that a probable cause hearing be held in a case removed to the Family Court is such a hearing was not held in the criminal court; and

... require the court to provide the Division of Criminal Justice Services with more complete information concerning the cases in which removal to the Family Court is granted.

3. The law was amended to read as follows:

Expenditures made by the division of youth for care... [of]...juvenile offenders committed pursuant to section 70.05 of the penal law...shall be subject to reimbursement ...by the social services district in which the juvenile offender resided at the time of commitment, in accordance...with the following schedule: twelve and one-half percent of the amount expended for care, maintenance and supervision of juvenile offenders from July first, nineteen hundred eighty-three through June thirtieth, nineteen hundred eighty-four; twenty-five percent of the amount expended for care, maintenance and supervision of juvenile offenders from July first, nineteen hundred eighty-four through June thirtieth, nineteen hundred eighty-five; thirty-seven and one-half percent of the amount expended for care, maintenance and supervision of juvenile offenders from July first, nineteen hundred eighty-five through June thirtieth, nineteen hundred eighty-six; fifty percent of the amount expended for care, maintenance and supervision of juvenile offenders after June thirtieth, nineteen hundred eighty-six. (N.Y Executive Law S. 529, McKinney 1982, Amended L.1983 c.15, Subd.2 S. 139; Subd.6 S. 145).

4. My analysis of Buffalo's JO arrests was published this past year in the journal Crime and Delinquency (Singer 1993).

5. Ordinary least-squares procedures are inappropriate given that the dependent variable is dichotomous, that is, indicating whether or not juveniles were certified for a grand jury indictment. The logistic estimates allow for estimates of the effects of skewed continuous as well as polytamous, exogenous variables on a categorical dependent variable without violating any major

statistical assumptions. Moreover, the logistic equation provides a direct analogy with ordinary least-squares regression. Individual cases are used in the presented models. When the cell counts for multivariate tables are analyzed, no significant difference is produced.

6. As previously noted, attached to each designated felony offense charge are varying lengths of minimum and maximum periods of incarceration. Conviction on an A felony can produce a maximum of life and a minimum of five to nine years in secure facility. However, an ordinal measure, while providing results that are similar to the ratio score measure, still restricts the range of available severity of offenses. For example, if I coded the A felonies as having a value of three, B felonies a value of two, and C felonies a value of one, then an arrest record that included a single A felony and B felony, would produce an ordinal severity score of 5. This would be equal to an arrest record that consists of five C felony arrest charges, each of which has a value of 1. Moreover, it would produce a larger severity score than a single homicide with a value of three. In other words, the range of severity is more restricted by an ordinal approach to measuring offense seriousness.

7. Based on the informed judgement of the director and assistant director of a DFY facility for JOs, I reduced the maximum sentence length by one-third. This one third reduction in sentence length is routinely based on good time, conditional release, and parole. My two-thirds of maximum sentence rule is modified for homicides in which juveniles received a maximum of nine years to life. In those cases, I added one third of the minimum for a sentence of 12 years (144 months). Again this is based on the informed view of institutional officials who report that juveniles convicted of homicide (nine to life) are usually rejected by the parole board after their minimum sentence.

REFERENCES

Books and Articles:

- Berk, Richard. 1983. "An Introduction to Sample Selection Bias in Sociological Data." American Sociological Review 48:386-397.
- Bishop, Donna M., Charles E. Frazier, and John Henretta, C. 1989. "Prosecutorial Waiver: Case Study of a Questionable Reform." Crime & Delinquency 35:179-201.
- Bishop, Donna M. and Charles E. Frazier. 1991. "Transfer of Juveniles to Criminal Court: A Case Study and Analysis of Prosecutorial Waiver." Notre Dame Journal of Law, Ethics and Public Policy 5:281-302.
- Casper, Jonathan and David Brereton, 1984. Evaluating Criminal Justice Reforms. Law and Society Review 18:121-144.
- Champion, Dean J. and Larry G. Mays. 1991. Transferring Juveniles to Criminal Court: Trends and Implications For Criminal Justice New York: Praeger.
- Emerson, Robert. 1983. "Holistic Effects in Social Control Decision Making." Law and Society Review 17:425-455.
- Emerson, Robert. 1981. "On Last Resorts." American Journal of Sociology 87:1-22.
- Emerson, Robert. 1991. "Case Processing and Interorganizational Knowledge: Detecting the "Real Reasons" for Referrals." Social Problems 38:198-211.
- Fagan, Jeffrey and Elizabeth Piper Deschenes. 1990. "Determinants of Judicial Waiver Decisions for Violent Juvenile Offenders." Journal of Criminal Law and Criminology 81:314-347.
- Feld, Barry C. 1990. "Bad Law Makes Hard Cases: Reflections on Teen-Aged Axe-Murderers, Judicial Activism, and Legislative Default ." Law and Inequality: A Journal of Theory and Practice 8:1-101.
- Feld, Barry C. 1987. "Criminal Law: The Juvenile Court Meets the Principle of the Offense: Legislative Changes in Juvenile Waiver Statutes". Journal of Criminal Law and Criminology 78:471-533.
- Hagan, John. 1989a. "Why is there so little Criminal Justice Theory? Neglected Macro- and Micro-Level Links between Organization and Power." Journal of Research in Crime and Delinquency. 26:116-132.
- Hagan, John. 1989b. Structural Criminology. New Jersey: Rutgers University Press
- Hamparian, Donna, Linda K. Estep, Susan M. Muntean, Ramon R. Priestino, Robert G. Swisher, Paul L. Wallace, and Joseph L. White. 1982. Major Issues in Juvenile Justice Information and Training, Youth in Adult Courts: Between Two Worlds. Washington, D.C.: U.S. Department of Justice.
- Jacobs, Mark D. 1990. Screwing the System and Making it Work. Chicago: University of Chicago Press.
- Matza, David. 1964. Delinquency and Drift. New York: John Wiley.
- Mather, Lynn M. 1979. Plea Bargaining or Trial? Massachusetts: D.C. Heath and Company.

- McGarrell, Edmund F. 1989. "The Ideological Bases and Functions of Contemporary Juvenile Law Reform: The New York State Experience." Contemporary Crises 13:163-187.
- Osburn, Lee Ann and Peter A. Rode. 1984. "Prosecuting Juveniles as Adults: The Quest for "Objective" Decisions." Criminology 22:187-202.
- Rothman, D.J. 1980. Conscience and Convenience: the Asylum and Its Alternatives in Progressive America. New York: Little Brown.
- Royscher, Martin and Peter Edelman. 1981. "Treating Juveniles As Adults in New York: What Does It Mean and How Is It Working?" Pp. 265-293 in Major Issues in Juvenile Justice Information and Training: Readings in Public Policy, edited by John C. Hall, Donna Martin Hamparian, John M. Pettibone, and White Joseph L. Columbus, Ohio: Academy for Contemporary Problems.
- Singer, Simon I. and Charles P. Ewing. 1986. "Juvenile Justice Reform in New York State: The Juvenile Offender Law." Law and Policy 8:457-483.
- Simon I. Singer and David McDowall. 1988. "Criminalizing Delinquency: The Deterrent Effects of the Juvenile Offender Law." Law and Society Review 22:521-535
- Singer, S.I. 1993. "The Automatic Waiver of Juveniles and Substantive Justice." Crime and Delinquency 39:253-261
- Sutton, John R. Stubborn Children: Controlling Delinquency in the United States, 1640-1981. Berkeley: University of California Press.
- Wolfgang, Marvin E., Robert Figlio, Paul Tracey and Simon Singer. 1985. "The National Survey of Crime Severity." In Bureau of Justice Statistics. Washington, D.C.: Government Printing Office.
- Zimring, Franklin E. 1991. "The Treatment of Hard Cases in American Juvenile Justice: In Defense of Discretionary Waiver." Notre Dame Journal of Law, Ethics and Public Policy 5:267-280.

Government Reports:

- New York State Division for Youth Bureau of Program Analysis and Information Services. 1983. Annual Statistical Report. September 1983.
- New York State, Division for Youth, Bureau of Program Analysis and Information Services. 1984. "Population Growth in DFY Level 1 Programs 1984 (Spring Projection, Executive Summary." unpublished draft. March 26.
- New York State Division for Youth. 1978-1983. Annual Statistical Report. Albany, New York: State of New York.
- New York State Division of Criminal Justice Services. 1983. "Juvenile Offenders in New York State: 1982 Report." State of New York Executive Department.

Newspaper Reports:

Kaiser, Charles. 1978. "Youth held in 2 murders asked for placement in a foster home." New York Times. July 20.
Kaiser, Charles. 1978. "Subway slayer's accomplice, 17, is sentenced to 8 years in prison." New York Times. August 21.
1978. "Juvenile Justice in State of Disarray." New York Times, March 2.
New York Times . 1976a. "Juvenile Crime Laws." May 3.
1978. "Bosket recaptured after Goshen escape New York."
New York Times. December 27.

Relevant Legal Statutes:

Crime Package Bill of 1978 (1978 N.Y. Laws Chapter 481)
New York State Legislature Assembly. 1976b. "Juvenile Crime Laws."
New York State Legislature Assembly. 1978. "Extraordinary Session [Debate]. from the Record. July 19.
Vega v. Bell. 1979. 419 N.Y.S. 2d 454.
N.Y Executive Law S. 529. McKinney 1982. Amended L.1983 c.15
Subd.2 S. 139; Subd.6 S. 145

APPENDIX B

Seriousness of Arrests:

T-Statistics for differences in the value of beta coefficients comparing the effects of independent variables on logistic and regression models for NYC and Non-NYC counties.

Regression Dependent: Arrest Severity

<u>Variable</u>	<u>Difference</u>	<u>t</u>
Time	.058	4.46

Regression Dependent: Adjudication

<u>Variable</u>	<u>Difference</u>	<u>t</u>
Age	0.097	.346
Serious	-.003	-2.52
Arstime	0.007	7.0
Population	-0.407	-5.02
Severity	-0.149	-6.21

Logistic Dependent: Removal

<u>Variable</u>	<u>Difference</u>	<u>t</u>
Gender	0.355	2.45
Arstime	0.033	-8.18

Logistic Dependent: Conviction

<u>Variable</u>	<u>Difference</u>	<u>t</u>
Age	0.239	3.51
Gender	0.449	2.81
Serious	-0.009	-3.09
Population	-0.907	-4.05

Logistic Dependent: Custody

<u>Variable</u>	<u>Difference</u>	<u>t</u>
Nonwht	0.231	6.6
Serious	0.016	2.54
Prior	1.013	2.47

EXECUTIVE SUMMARY

I. Introduction

This study focuses on the waiver of juveniles into criminal court. Legislative waiver automatically transfers jurisdiction from the juvenile court to the criminal court based on categories of felony offenses.

II. Relocating Juvenile Crime

New York's 1978 Juvenile Offender law lowered the age of criminal responsibility to 13 for juveniles charged with murder and to 14 or 15 for a wide range of other violent offenses. Technically, the initial court of jurisdiction for juveniles charged with designated felonies became criminal court.

III. Real reasons for assigning criminal responsibility to juveniles are related to the

- A. unique legal requirements of waiver legislation;
- B. severity of the offense;
- C. personal characteristics of Juvenile Offenders (JOs);
- D. jurisdictional and temporal context of legal decision making.

IV. Initial Case Processing Decisions

- A. Official Qualitative Reactions: Officials distinguish ordinary and non-ordinary designated felony offenses. For juveniles charged with less serious "ordinary" violent felonies, officials will consider the juvenile's personal background characteristics.
- B. A survey of DAs reveal that prior offense is an important determinant of the decision to charge a juvenile in criminal court.
- C. Based on Buffalo data the decision to indict an eligible juvenile in criminal court is most strongly related to family background

V. The Case Processing of Juvenile Offenders in New York State

A. Arrests

The severity of arrest charges is related to the personal characteristics of offenders, the time of arrest, and the county of jurisdiction. Contrary to the expected distribution of offense charges by race, white juveniles are charged with more serious designated felony offenses than black juveniles. Moreover, some counties arrest juveniles as JOs for only the most serious of designated felony offenses.

B. Adjudication

For juveniles charged with designated felony offenses, the severity of arrest charges and offender characteristics are related to the likelihood of removal to juvenile court. Equally important is the jurisdictional and temporal context. For example, black juveniles are more likely than white juveniles to be assigned criminal responsibility in non-New York City (NYC) counties. Logistic estimates show no significant racial disparities in NYC counties.

C. Dispositions

1. Among the personal characteristics of convicted JOs, non-whites and boys are significantly more likely to be incarcerated controlling for offense seriousness and prior arrests. Offense severity is also a significant predictor of custody. The temporal and jurisdictional context of sentencing JOs are also important determinants. Incarceration rates are on average higher in smaller counties. Moreover, the increased cost of incarceration led to a decline in the number of juveniles incarcerated.

2. Two-stage regression techniques controlling for the possible effects of selection bias and the disposition stage were used to estimate the determinants of sentence length. The severity of offense is a significant determinant of the expected months of sentence.

VI. A Further Look at Incarceration Rates

State agency data through 1991 confirmed the individual level data analysis of the organizational and temporal context of dispositions for JOs.

VII. On Evaluating Waiver Reforms

Comparative research on juveniles in both the juvenile and criminal justice system should be pursued.