ABSTRACT: Prior research on juvenile and criminal courts argues that because of contextual differences between these two forums, court actors’ perceptions of guilt and culpability may be more influenced by racial/ethnic or gender stereotypes in juvenile courts than in criminal courts, regarding the prosecution of adolescents. In this article, the authors explore this differential bias hypothesis, using both quantitative and qualitative data. After comparing the factors that shape sentencing outcomes across court types, the article turns to qualitative data to understand whether the contextual distinctions between these two types of courts create greater opportunity for discrimination in juvenile court. Neither the quantitative nor qualitative results support this differential bias hypothesis. The quantitative analyses do not find a significantly different effect of race/ethnicity or sex across court types. The qualitative analyses help explain this result; although juvenile courts may expose adolescents to greater risks of being judged according to stereotypes, two contextual features protect adolescents by mitigating the impact of these potential hazards: aggressive and well-organized public defenders in juvenile court and the similarity of case processing during the sentencing phases of juvenile and criminal court. Keywords: race/ethnicity; gender; juvenile transfer; court context

Sociologists studying juvenile and criminal courts have long noted that a defendant’s race or ethnicity and sex can have an effect on court outcomes (see, e.g., Thomson and Zingraff 1981; Tonry 1995; Zatz 2000). These effects of biases caused by racial/ethnic and gender stereotypes may vary across institutional contexts; in particular, many scholars who focus on juvenile courts argue that race or ethnicity1 and sex may play a relatively larger role in juvenile court proceedings than criminal (adult) court proceedings because of contextual differences between the two forums (e.g., Feld 1999). Yet no research empirically compares the relative influence

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of race/ethnicity and sex on the outcomes and processes of prosecuting similar offenders across these two types of courts. This article addresses this gap in the research by considering the relative impact of race/ethnicity and sex on sentencing adolescents in juvenile and criminal courts and whether there are more opportunities for biases to enter case-processing decisions in juvenile court than criminal court.

Prior research in both criminal and juvenile courts shows that relative to White defendants, racial and ethnic minorities are more likely to be arrested and referred to prosecution (Bishop and Frazier 1988; Conley 1994; Leiber and Jamieson 1995), and they are at greater risk of detention, conviction, and incarceration (Lizotte 1978; Spohn, Gruhl, and Welch 1982; Steffensmeier and Demuth 2000). Their behaviors may be more likely to be interpreted by decision makers through negative stereotypes, which may make these defendants appear more blameworthy than White defendants (Bridges and Steen 1998; Conley 1994; Emerson 1969). Certainly, there are disagreements within this literature over the relative weight of race, ethnicity, and legal factors (e.g., offense severity, prior record) or the nature of the impact of race or ethnicity on the justice process (e.g., direct, indirect, or interaction effects; see Bortner, Zatz, and Hawkins 2000; Hawkins 1987; Kurlychek and Johnson 2004; Peterson and Hagan 1984; Zatz 1987). Yet overall, the literature on racial and ethnic minorities in the criminal justice system demonstrates that relative to Whites, minorities face several disadvantages from the point of arrest to sentencing (for a review, see Zatz 2000).

With regard to gender, prior research finds that stereotypes of traditional gender roles are a key factor in assessments by criminal justice decision makers (Daly 1994). The three hypotheses most often tested to establish whether females experience discrimination in case processing are the “evil” woman hypothesis, the chivalry or paternalism hypothesis, and the equal treatment hypothesis (Belknap 2001). In support of the “evil” woman hypothesis, some scholars find that females who commit violent crimes may be perceived as deviating from a stereotype of “normal” feminine behavior; they therefore might be assessed as more deviant than males (or as mentally ill) and given relatively harsh punishments (see Gaarder and Belknap 2002). Others find support for the paternalism hypothesis and argue that females—especially those with young children—may receive a gender discount, or less severe punishments, than males for similar offenses (Steffensmeier, Kramer, and Streifel 1993). Court decision makers might interpret female offenders’ behaviors as less threatening because of gender stereotypes of females as less harmful or less deserving of punishment (Barnes and Franz 1989). In contrast, the equal treatment hypothesis suggests that although male and female defendants might receive different reactions from court actors, such as expressed sympathy or moral lecturing, most of the observed gender disparities in court treatment can be explained by formal legal factors, such as the defendant’s prior record and severity of offense (Daly 1994; see also Zatz 1984). It is important to note that the results found in this body of research vary somewhat by the type of data analyzed. Although quantitative analyses of case processing demonstrate mixed results based on gender, qualitative research often reveals perceptions by both offenders and court actors of gendered justice at all decision
Court Context and Discrimination: Exploring Biases Across Juvenile and Criminal Courts

junctures and a lack of treatment opportunities geared specifically at addressing females’ issues (see Chesney-Lind and Shelden 2004; Gaarder, Rodriguez, and Zatz 2004).

On their own, both gender and race/ethnicity seem to shape juvenile and criminal court decision making. Yet these distinct concepts may interact with one another as well. Chesney-Lind and Shelden (2004), for example, find that females of color are treated much more harshly than their White counterparts in juvenile court (see also Daly 1994). Moreover, both sources of bias have the potential to produce expectations for future behavior that may vary among groups of defendants, which shape the construction of risk and blameworthiness. Gender and racial/ethnic stereotypes thus have an important commonality regarding their potential effect on court decision making; they may be used unintentionally as cues of normative behavior, deviant lifestyle, negative character traits, or risk of future criminal activity. These cues in turn shape decision makers’ perceptions of individual defendants’ level of personal responsibility for offenses and their subsequent culpability or blameworthiness. The stereotypes of a predatory African American and of a passive female certainly carry different messages, but both have the potential to shape court decision makers’ constructions of culpability among the juveniles before them and thereby introduce biases into case-processing outcomes. In this article, we build on this understanding by considering whether and how institutional context can alter the effect of biases on the prosecution of adolescents. In particular, we seek to compare the influence of this bias and the institutional avenues for it to appear across juvenile and criminal courts.

In his critique of the juvenile court, Barry Feld (1999) adds an important dimension to this discussion of racial/ethnic and gender biases in courts; he argues that the judicial discretion and procedural laxness of juvenile court allow greater penetration of bias in juvenile court than in criminal court. Thus, in addition to the potential impact of sex and race/ethnicity in the criminal justice system, adolescents may face further hazards when prosecuted in juvenile courts that lack some of the due process protections of criminal courts (Feld 1999; see also Bortner 1982; Emerson 1969; Morris and McIsaac 1978; Platt 1977). Most juvenile courts are shielded from public scrutiny (and accountability) through confidentiality provisions, they do not allow jury trials, they follow less formal administrative protocols than criminal courts, and they are statutorily required to consider social factors (rather than only offense-oriented factors) when processing cases. Additionally, juvenile courts often rely on indeterminate sentencing, which allows judges great discretion in deciding on punishments. As a result of the differences in legal protections, formality, and case processing across juvenile and criminal courts, Feld argues that juvenile court decision making is more capricious and more influenced by gender and ethnic stereotypes than criminal court decision making (Feld 1989, 1997, 1999).

If substantive justice means that decision makers render judgments based on defendants’ perceived character instead of their offenses, then this is indeed likely. For example, in his classic study of juvenile courts, Robert Emerson (1969) finds that court actors frequently rely on evaluations of defendants’ characters to make decisions about handling cases. These evaluations usually result in the sorting of
defendants’ characters into one of several typifications, rather than categorizing cases based on offenses. More recently, Bridges and Steen (1998) find that juvenile court probation officers tend to explain the crimes of White youth and African American youth differently, whereby African American youth are viewed as having personality defects and White youths’ crimes are explained as a result of environmental defects. These studies illustrate how the juvenile court’s encouragement of paternalistic decision making, as well as the discretion and informality associated with this substantive brand of justice, may allow room for stereotypes to influence case processing.

Moreover, Anthony Platt (1977) and other critical historians criticize the initial juvenile courts as institutions designed to discipline poor and minority youth. According to Platt, juvenile courts were created to discipline and train a young labor force of immigrant children; some scholars argue that this class and racial bias characterizes contemporary juvenile courts as well (Feld 1999). With regard to gender, many argue that the double standard of justice for females has existed since the juvenile court’s inception and continues to flourish within the paternalistic institution. Meda Chesney-Lind (1977) has shown repeatedly that juvenile courts disadvantage girls by implementing a paternalistic style of justice and by punishing girls for status offenses (e.g., running away or curfew violations) and for their sexuality more harshly than boys (see also Chesney-Lind and Shelden 2004).

Based on these prior studies, there is reason to believe that relative to criminal courts, three institutional characteristics result in a greater impact of a defendant’s race or ethnicity and sex in juvenile court decision making: (a) the broader range of factors considered in juvenile court decision making, (b) the greater level of judicial discretion among juvenile court judges, and (c) the narrower procedural protections and external scrutiny (Feld 1999). These contextual distinctions between court types might result in relatively greater opportunities for juvenile court actors than criminal court actors to make decisions based on racial/ethnic and gender stereotypes. Given the importance of court contexts in shaping court decision making (Dixon 1995; Eisenstein, Flemming, and Nardulli 1988; Eisenstein and Jacob 1977; Ulmer 1997), the juvenile court’s paternalistic roots, and the fact that the court’s paternalism and contextual characteristics render juvenile court actors with greater power than criminal court actors to subjectively construct blameworthiness based on perceptions of defendants’ characteristics, we would expect to find that racial/ethnic and gender biases are more prevalent in juvenile court than in criminal court.

In this article, we use both quantitative and qualitative data to explore this hypothesis about relative disparities along race/ethnicity and sex lines, which we refer to as the “differential bias” hypothesis. First, we analyze quantitative data to compare the impact of race/ethnicity and sex on sentencing outcomes for adolescents in these two court types. Second, we analyze qualitative data to compare how the components of this hypothesis (concerning the institutional contexts of juvenile and criminal courts) make racial/ethnic or gender biases more likely in juvenile court than in criminal court. One can find numerous examples of prior research that document racial/ethnic or sex biases in criminal and juvenile courts
(see earlier), yet little prior research systematically compares the factors that influence case processing of similar cases across the two types of courts. By continuing beyond a quantitative search for racial/ethnic or sex disparities across court types and comparing institutionally structured opportunities for biases across juvenile and criminal courts, this article adds a specific but very important piece of information to our understanding of how race/ethnicity, sex, and court context interact.

METHODS

To explore the differential bias hypothesis and compare the relative influence of race/ethnicity and sex on sentencing across juvenile and criminal courts, we compare cases with similar offense and offender characteristics from each of the two types of courts. Our data include cases prosecuted in New York criminal courts and New Jersey juvenile courts. Because the boundary between juvenile and criminal court jurisdictions varies between these two states and yet they are adjacent to one another and comparable along a variety of social and criminal justice criteria, we can compare similar samples of adolescents’ cases across the two jurisdictions. Analyzing case-processing decisions across two court types provides a natural experimental environment with which to test the differential bias hypothesis.

In New York, the Juvenile Offender Law (part of the New York State Crime Package Bill of 1978) requires that fourteen- and fifteen-year-olds (at the time of offense) charged with any of seventeen designated felony offenses and thirteen-year-olds charged with murder be excluded from juvenile court. These adolescents’ cases (hereafter juvenile offenders [JOs]) originate in criminal court rather than juvenile court, and they are prosecuted according to all general criminal court procedures (Warner 2000). In addition, New York’s juvenile court jurisdiction ends after the age of fifteen for all offenders, regardless of charged offense. In contrast, all adolescents younger than eighteen in New Jersey are initially prosecuted in juvenile court. This jurisdictional disparity allows us to compare similar offenders whose ages and criminal charges place those living in New Jersey in the juvenile court system and those living in New York City in the criminal court system.

We sampled cases from three counties in each state for the quantitative data set and collected information in two counties in each state for the qualitative data. The data were collected in counties in New York and in Northeastern New Jersey. The sampled counties in each state border one another, are connected to one another by public transportation, and are all part of a single Census Metropolitan Statistical Area. Moreover, the counties in each state share several characteristics: (a) they are each among the most populous counties in the two states, (b) they have similar crime problems relative to their positions in their respective states, (c) they are all among the top five counties in each state regarding frequency of homicides and of individuals sent to state prison, and (d) according to 1990 census data, the six sampled counties have similar rates of unemployment, poverty, female-headed households, and residential mobility (U.S. Census Bureau 1994).3

We compare similar cases across the two states to avoid the methodological limitations of many previous comparisons between juvenile and criminal court
cases. Specifically, this method avoids the potential sample selection bias that can plague studies comparing transferred cases to nontransferred cases within a single jurisdiction. Such a bias could occur if transfer is limited only to more serious cases, with less serious cases being retained by the juvenile court (see Fagan 1996).

1. Quantitative Data

The quantitative data consist of 2,223 cases—1,175 from New York’s criminal courts and 1,048 from New Jersey’s juvenile courts. The sample includes cases of defendants fifteen or sixteen years old who were charged in 1992 or 1993 with aggravated assault (first degree and second degree), robbery (first degree and second degree), or burglary (first degree). We use these three arrest charges because they are felony offenses and they are among the most common offenses from the list of “JO eligible” offenses (thus allowing for a large sample). The samples were collected after cases were screened in each system by a prosecutor; in New York, they were sampled at arraignment, and in New Jersey, they were sampled at court filing. As a result of the screening, one can be fairly confident that most of the sampled offenses were appropriately charged. Furthermore, only the most serious subcharges within each offense type were sampled, which should eliminate much of the variation one may find within broad arrest charge categories.

We use cases of fifteen- and sixteen-year-olds because in New York these adolescents are excluded from juvenile court through two different mechanisms. The JO Law excludes the fifteen-year-olds from juvenile court, and the sixteen-year-olds are above the state’s general age of criminal majority. Using both types of cases precludes the potential bias of any effect of a particular method of transferring adolescents to criminal court. In other words, the data show how adolescents fare in criminal court regardless of the legal method by which they arrive there. Table 1 displays a comparison of the cases from New York’s criminal court and New Jersey’s juvenile court. Though the cases from each state are similar regarding most characteristics, they differ along a few dimensions. The New York (criminal court) sample consists of greater percentages of sixteen-year-olds, racial/ethnic minority defendants, and male defendants than in the New Jersey (juvenile court) sample. The New Jersey sample contains a greater percentage of individuals who have prior arrest records, are rearrested during sampled case processing, and have arrest warrants issued by a judge during case processing.

Another noticeable difference between samples is the distribution of arrest charges. The majority of cases in the New York sample are robbery cases, though the New Jersey sample is nearly equally divided among the three sampled charges. This disparity is the result of the sampling procedure—cases were randomly sampled within arrest charge categories to match their representation within each county’s population of eligible cases. Thus, sample differences result from natural variation between the two populations sampled. Furthermore, though they involve different behaviors, charges of first-degree aggravated assault and first-degree robbery are of equal legal severity in New York. We include each of these measures as a control variable in the following analyses to hold these differences constant while considering our research question.
2. Qualitative Data

To understand not just what differences (if any) emerge across courts with regard to sex and race/ethnicity but also how these differences either arise or are prevented, one would need to understand the processes and institutional dynamics by which court outcomes are reached. To fulfill this need, we gathered qualitative data on the administrative rules and procedural norms in these courts. These data include court observations and interviews in four of the six counties sampled for the quantitative data sets. For the New York counties that supply the criminal court cases, we collected qualitative data within the “youth part” of each county’s...
criminal court system. Youth parts are courtrooms within the criminal court building that specialize in cases of adolescents while maintaining all criminal court procedures and rules.

The first author conducted thirty-two interviews with judges, prosecutors, and defense attorneys who work in the four counties studied—seventeen interviews with juvenile court decision makers and fifteen with criminal court decision makers. The interviews consisted of both open-ended questions followed by probes to explore themes and closed-ended questions asking respondents to answer questions using scaled response sheets. The interview sessions ranged from fifty minutes to two hours in length. The interviews addressed our research questions by inquiring about the effect on case processing and decision making of the laws governing how adolescents are prosecuted, how the courts are organized through administrative rules, informal norms that guide court processing, and interaction between courtroom workgroup members. All interviews were tape recorded and sent to a professional transcriber (see Kupchik 2006).

The qualitative data also include field notes from courtroom observations. The first author observed 978 hearings in these four counties during the course of eighteen months, from October 2000 to April 2002. Rather than following individual cases (which occasionally take years for completion), we observed court proceedings on days for which large numbers of cases were scheduled. In New York, we attended all court “calendar” days, during which all active cases not on trial are scheduled for whatever action or hearing type is required. In New Jersey, there is no specific calendar day, so we attended court on the days with the most cases scheduled each week. We also observed at least one trial in each county. Using this procedure, we observed the full array of each court’s caseload.

In each of the two New York criminal courts, the observer sat next to the judge and court clerk rather than in the audience. This vantage point allowed us to observe the off-the-record proceedings taking place at each judge’s bench. Such access was unnecessary in the juvenile courts; because juvenile court hearings are confidential and closed to the public, court actors hold almost all conversations on the record rather than approaching the judge’s bench. The observer’s presence was never acknowledged by court actors during hearings, and he remained silent during all hearings; thus, it is unlikely that our presence had a significant impact on the content or interaction of these hearings.

When observing court proceedings, the observer noted the content and nature of the discussion in court, the content and nature of off-the-record conversations at the judge’s bench, the requests made by different parties of the judge, and the reasons and explanations given for these requests or for any decisions that are made. The repetition of most routine interactions allowed the observer to take accurate field notes by using brief notations for many of these exchanges and focusing the note-taking efforts on any unusual interaction (see West 1996). The author transcribed these field notes daily to translate the notes into nearly complete records of all court activity. Though exact transcriptions of hearings would be preferable to the field notes, the field notes the author recorded are consistent with data used by others for similar research (Burns and Peyrot 2003; Holstein 1988).
3. Analyses

We begin by examining descriptive results of conviction and sentencing in each type of court. Rather than comparing percentages of adolescents formally convicted, we compare the relative distributions of cases across four categories: not convicted or diverted from court; given a review period; given a monetary fine, alternative to incarceration or probation; and incarcerated. We use these categories rather than formal guilt because the two court systems use different legal terms and procedures to classify similar outcomes. For example, each jurisdiction sends a certain number of cases to a review period, during which cases are set aside for a number of months and dismissed at the end of the time period if the defendant has not been rearrested. Yet in New Jersey, juvenile court defendants must plead guilty for this to occur (to receive an “adjourned disposition”), and in New York, criminal court defendants do not have to plead guilty (to receive an “adjournment in contemplation of dismissal”). Thus, by comparing official conviction one would miss the equivalence of these categories.

We continue the quantitative analysis by estimating a series of Heckman two-stage probit models with robust standard errors. These models each use a sentence of incarceration as the dependent variable. The decision to incarcerate is perhaps the most crucial sentencing decision. It also offers a clearer comparison between court systems than would the juxtaposition of other sentencing decisions. For example, probation or restitution may have different meanings across jurisdictions or may be invoked and enforced differently. Of course, custodial sanctions imposed by juvenile and criminal courts differ from each other regarding duration, type of institution, and conditions of confinement (Forst, Fagan, and Vivona 1989). Yet on a basic level of comparison, imprisonment is a fairly similar punishment in both systems, in that it always involves deprivation of liberty through coercive means in institutions designed to punish. We use Heckman two-stage models because any analysis of sentencing practices is based on a censored sample, in that only convicted cases are included in models with sentencing as the dependent variable (Berk 1983). Conviction in the original court is the censoring value included in each model, meaning that cases only remain in the censored sample if they result in conviction. We use probit analyses because the dependent variable is dichotomous. And the models include a robust cluster by county, which adjusts the standard error of each coefficient to account for any systematic differences between cases from each of the six included counties.

The data consist of both offense-oriented and offender-oriented variables (see Table 1 for means and standard deviations of continuous variables). The offender-relevant variables include age, sex (coded 1 = male, 0 = female), and race/ethnicity (dummy variables indicating White, Latino/a, African American, and all other races/ethnicities). The offense-relevant variables include number of prior arrests (natural log), number of arrests during the time the sampled case was being processed (also natural log and labeled concurrent arrests), if the defendant was previously incarcerated (coded 1 = yes, 0 = no), presence of an associated weapons charge (coded 1 = yes, 0 = no), most serious arraignment charge (dummy variables indicating robbery, aggravated assault, and burglary),
if the defendant was detained by the court pending adjudication (coded 1 = yes, 0 = no), whether a warrant for the defendant’s arrest was executed during case processing (coded 1 = yes, 0 = no), and type of court (coded 2 = criminal court, 1 = juvenile court). For the series of dummy variables representing both race/ethnicity and arrest charge, the largest categories (African American and robbery, respectively) were excluded from the multivariate models as reference categories. Associated weapons charge is included to account for when the sampled offenses were committed with a weapon and thus to help control for offense severity. Variation Inflation Factors revealed that multicollinearity is not an issue.

To examine whether race, ethnicity, and sex have different effects across the two court types, we estimate two probit models. The first model regresses the likelihood of a custodial sentence on each of the independent variables. The second model adds interaction terms for type of court, with each variable indicating membership in sex and race/ethnicity categories (court type multiplied by sex, court type multiplied by White, court type by Latino/a, and court type by Other race/ethnicity—African Americans are excluded as the contrast category). These interaction terms are computed using a centering technique to avoid multicollinearity (see Aiken and West 1991). The change in model fit from Model 1 to Model 2 tells us whether the independent variables operate differently as a function of court type. In other words, if juvenile courts allow greater room for biases than criminal courts, then we should find that sex and race/ethnicity have disparate effects on sentencing across juvenile and criminal courts; our data would support this differential bias hypothesis if Model 2 (with interaction terms) is a better predictor of sentencing than Model 1 (without interaction terms).

We continue by examining the process by which biases might enter case processing and shape the construction of culpability in each court type. As we describe earlier, we consider whether three contextual features of juvenile courts enhance the relative vulnerability of minorities and females in juvenile courts, as predicted by the differential bias hypothesis: (a) the broader range of factors considered in juvenile court decision making, (b) the greater judicial discretion of juvenile court judges, and (c) the narrower procedural protections and external scrutiny in juvenile court.

It is important to note that we are not using the qualitative data to test whether discrimination occurs across court types, but rather, we are examining whether the structural foundation of the juvenile court allows for more bias to enter case-processing decisions than in criminal court. The infrequency of White defendants in cases we observed precludes us from making any conclusions about the overall impact of race/ethnicity, though gender stereotypes were clearly expressed in both court types. For example, consider the following criminal court sentencing hearing for a girl convicted of slashing another girl with a razor:

Prosecutor: Your honor, this was a heinous crime. A girl’s face was disfigured, there’s been noncompliance with curfew, absences at school, and the defendant deserves the full two to nine years [in prison]. She has missed her chance.
Defense Attorney: Your honor, the defendant was in compliance with your orders. The defendant had many problems because of her pregnancy. She is fifteen years old, and someone in the neighborhood was getting girls pregnant. The defendant has since cooperated with the district attorney’s office regarding the prosecution of the father of her baby.

[The judge asks the defendant if she wants to say anything—she shakes her head no.]

Judge: The defendant has pled guilty to assault in the first degree. I understand that a partial factor was that the victim shared an interest in the father of her child. But the defendant acted wrongly out of jealousy. The defendant has cooperated with the District Attorney’s office on the case against this father. She has been substantially compliant but not 100 percent compliant with the conditions of her release. I’m taking into account the following factors: age, circumstances of the offense, her pregnancy, her obsession with the boy, and her cooperation with the District Attorney’s office. (emphasis added)

This hearing shows the gendered nature of criminal court proceedings by invoking the defendant’s pregnancy and “obsession with the boy” as mitigating factors in her offense. Yet a similar gendered style of thought pervades juvenile proceedings as well. In the following hearing, regarding a fourteen-year-old also accused of aggravated assault, the juvenile court judge claims to understand why the defendant is not attending school and is running away from home:

Judge: Obviously she isn’t complying with you or with my orders. . . . I think it’s obvious why—she’s running away to her boyfriend. I guess it’s infatuation. You can’t continue to do that. But looking at you, I don’t think you’re going to listen to me, either, because you’re of the mind that you’re going to do what you want. And I can’t allow that, so I have to send you to the shelter. If you run from there, I’ll have to send you to the youth house. I’m sending you to the shelter and you’ll do what they say.

Thus, as one might predict by the prior literature (e.g., Chesney-Lind and Shelden 2004; Gaardner and Belknap 2002), a gender bias pervades both types of courts. It is therefore necessary to examine whether the institutional arrangements of juvenile court allow for biases to have a relatively greater impact in juvenile court than criminal court. Furthermore, comparing the institutionally structured opportunities for bias rather than simply case outcomes themselves adds an entirely new analysis to the body of literature on this topic.

RESULTS

1. Quantitative Analysis: Testing for a Relative Bias across Court Types

Figure 1 illustrates the case outcomes for male and female adolescents in New York’s criminal courts and New Jersey’s juvenile courts. In both court types, females are less likely than males to be incarcerated. In the juvenile court, only 1.1% of females (and 8.8% of males) are incarcerated, and in the criminal court, only 10.3% of females (and 23.0% of males) are incarcerated. And in juvenile court, females are more likely than males not to be convicted or to have their
cases diverted out of court. These initial bivariate results indicate that females receive less harsh sanctions than males in both courts, not just in the juvenile court.

Figure 2 shows the distribution of case outcomes by racial/ethnic category for each court type. Again, the results suggest an effect of race/ethnicity but are inconclusive. In both court types, a smaller proportion of White defendants are incarcerated relative to other groups. This is especially true for African Americans, who have the largest proportion of cases that result in incarceration. In the juvenile court, only 4.3 percent of White adolescents and 9.1 percent of African Americans are incarcerated; in the criminal court, 12.3 percent of Whites and 22.3 percent of African Americans are incarcerated. This potential effect of race/ethnicity appears to be consistent across the two types of courts, with similar racial and ethnic discrepancies in juvenile and in criminal courts. In sum, these cursory quantitative comparisons fail to support the hypothesis that prosecution in juvenile court places non-Whites or either males or females at a disadvantage relative to prosecution in criminal court.

The probit model results are shown in Table 2. As one would predict based on the descriptive figures, the variable for sex is a significant predictor of incarceration when controlling for all other factors, with males more likely than females to be incarcerated. Yet contrary to prior research, none of the dummy variables for race/ethnicity is a statistically significant predictor of incarceration. Other variables that
Court Context and Discrimination: Exploring Biases Across Juvenile and Criminal Courts

are statistically significant predictors of an increased likelihood of incarceration are having an associated weapons charge, being detained pretrial, the numbers (natural log) of prior arrests and of concurrent arrests, a history of incarceration, and the type of court. Prosecution for burglary relative to robbery significantly predicts a decreased likelihood of incarceration. And consistent with the descriptive figures, youth in criminal court are substantially (and significantly) more likely to be incarcerated than youth in juvenile court.

The quantitative results do not support the differential bias hypothesis; adding the interaction terms fails to improve the model’s fit, meaning that these variables do not have a significantly disparate effect across court types. Moreover, none of the coefficients for the interaction terms are statistically significant. These results suggest that though sex and race/ethnicity—and sex in particular, as this was a significant predictor in Model 1—might have an impact on the decision to incarcerate, any potential effects do not vary significantly across the two types of courts. And though youth in criminal court are much more likely to be incarcerated than youth in juvenile court, this seems to be only a main effect of court type, with no corresponding interaction between court type and any of the race/ethnicity or sex variables. Therefore, these results fail to support the idea that prosecution in juvenile court puts non-Whites or either males or females at a disadvantage relative to prosecution in criminal court.

Figure 2
Court Outcomes by Race and Court Type
### TABLE 2
Two-Stage Probit Regression on Incarceration

<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th></th>
<th>Model 2</th>
<th></th>
</tr>
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<tr>
<td></td>
<td>$B$</td>
<td>$SE$</td>
<td>$z$</td>
<td>$B$</td>
</tr>
<tr>
<td>Age</td>
<td>-0.066</td>
<td>.061</td>
<td>-1.08</td>
<td>-0.062</td>
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<tr>
<td>Sex ($0 = $female$; 1 = $male$)</td>
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<td>.171</td>
<td>2.42*</td>
<td>0.498</td>
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<tr>
<td>Race/ethnicity (contrast = African American)</td>
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<td></td>
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<tr>
<td>White</td>
<td>-0.106</td>
<td>.164</td>
<td>-0.65</td>
<td>-0.099</td>
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<tr>
<td>Latino/a</td>
<td>0.066</td>
<td>.134</td>
<td>0.49</td>
<td>0.078</td>
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<td>Current charge (contrast = robbery)</td>
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<td>Burglary</td>
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<td>.171</td>
<td>-2.09*</td>
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<td>Aggravated assault</td>
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<td>.111</td>
<td>-1.27</td>
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<td>Associated weapon charge</td>
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<td>.122</td>
<td>2.26*</td>
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<td>Detained</td>
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<td>.193</td>
<td>4.64***</td>
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<td>Previously incarcerated</td>
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<td>7.81***</td>
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*p < .05; **p < .01; ***p < .001.

### 2. Qualitative Analysis: Considering Institutional Opportunities for Bias

Consistent with the differential bias hypothesis, we find that relative to criminal courts, a broader range of factors is considered in juvenile courts and juvenile court judges possess relatively greater discretion in sentencing. However, two characteristics of the courts we study make juvenile and criminal courts more similar than prior research would lead one to predict: (a) during sentencing, the
two court types actually are more similar to one another than at earlier phases of case processing and (b) aggressive and well-organized defense attorneys in juvenile court protect defendants from many of the potential hazards of juvenile court procedures.

**Range of factors considered**

Throughout case processing, a broader range of factors is discussed in juvenile than in criminal court. Juvenile court judges delve into the defendants’ personal lives early and often during court proceedings. Consider the following courtroom interaction, which is typical of juvenile court hearings:

*Defense Attorney:* Your honor, I ask for his release. Unlike the other codefendant, he has no prior contact with the [juvenile court] system. His parents are here and would like to take him home. There was a gun displayed in this offense, but it wasn’t pointed at anyone. And there were adults involved. Maybe he can be given in-home detention?

*Judge:* I don’t think he’s even in school, is he?

*Defendant’s Father:* If he isn’t, we’ll make him go.

*Judge:* I can’t release him. . . . Part of the problem is that he’s not in school, he’s got all this time on his hands, and he’s running around at 11:00 at night. He’s involved in what everyone agrees is a very serious offense. I can’t release him unless there’s some structured program in place. He’s not obeying his parents, am I right?

[Father nods yes.]

*Judge:* I can’t release him, not with him not listening to his parents. And of course, he’s innocent until proven guilty, but I can’t let him go. . . . Does he have a drug or alcohol problem?

[The parents both say no.]

*Judge:* Do you use drugs?

*Defendant:* No, I just smoke some [marijuana] blunts.

*Judge:* So that I have it for next time, what was the school situation?

*Defendant’s Mother:* Sometimes, I send him and he doesn’t participate.

*Defendant’s Father:* Bottom line is he doesn’t want to go. We’re trying to get him into the job corps. He’s got an appointment for an interview.

*Judge:* Good, keep trying and tell me what happens next time in court. Because something’s got to happen.

This hearing demonstrates how the defendant’s behavior at home, including his drug use, and his behavior at school are paramount concerns even in early stages of a case. The only discussion during this hearing of the actual offense or the evidence against the defendant is from the defense attorney’s early request to have the defendant released from detention. Following that, the judge involves the defendant’s family and discusses matters not relevant to the offense at hand.
In addition to judges asking about extralegal factors such as the defendant’s drug use or behavior at school or home, defense attorneys will introduce this type of information if it helps obtain more favorable results for their clients. Additionally, personal information about defendants may be introduced into juvenile court hearings through the active participation of defendants’ parents. A parent, or a suitable substitute, such as an aunt/uncle or a family friend, is required to be at all juvenile court hearings (or risk an arrest warrant being issued for them). The judge actively seeks the participation of both the juvenile and his or her parents, as the judge will ask either the defendant or the family (or both) direct questions; most juvenile court judges routinely ask parents, “How is he or she behaving at home?” Furthermore, parental consent is a vital component of court dispositions: judges will not send a defendant home to a parent who does not want to accept him or her back, and the presence of a parent often determines whether the judge releases the defendant at his or her first court appearance. The discussion of personal issues in juvenile court—often information introduced by parents—legitimates paternalistic punishment of adolescents. This is a primary mechanism that scholars have cited when discussing the differential bias, in that discriminatory social control is justified by a veil of therapeutic care (Emerson 1969; Feld 1999; Platt 1977).

In contrast to the consistently broad range of factors discussed in juvenile court, the range of factors discussed in criminal court varies by the phase of case processing. During the initial phases of case processing, court interaction is limited to discussion of evidentiary and other legal factors (e.g., whether the arrest was conducted properly). Yet contrary to what the literature might lead one to expect (e.g., Feld 1999), during sentencing hearings, the range of factors discussed in criminal court is similar to the range discussed in juvenile court.

Court observations reveal a routine pattern for this interaction during the early stages of nearly every single criminal court case. The prosecution and defense compete with one another to establish a case for guilt or innocence, with this debate focusing entirely on the evidence against the defendant, while the judge oversees this process, ensuring that it is conducted legally. Yet this pattern of interaction changes when the court begins to discuss sentencing. Judges require many defendants to attend counseling or treatment programs for six to twelve months after conviction and prior to final sentencing. During this time, defendants appear in court monthly with their defense attorneys and representatives from the treatment programs. The program representatives report to the judge on each defendant, including the offender’s educational background; occupational skills; mental, learning, or behavioral disabilities; and family support and supervision. Though defendants’ families are not directly involved in court hearings as in juvenile courts, the court still discusses personal information peripheral to the offense or prior record of the offender. Elsewhere, the first author (Kupchik 2003, 2006) describes in detail this pattern, which he refers to as a sequential justice model. Because of this sequential justice model, in which the sentencing stage of criminal court resembles a juvenile justice model of case processing, the potential opportunities for greater subjectivity and resulting discrimination in juvenile court than criminal court are minimized.
Judicial discretion

According to Feld (1999), juvenile court decision making is less bound by formal rules than is criminal court decision making in that a greater number of decisions are left to a judge's perception and discretion. Increased discretion could very easily make race/ethnicity and sex more important by allowing decision makers' biases to seep into the decision-making process (Leiber and Jamieson 1995). Yet as we show later, and contrary to the differential bias hypothesis, judges in both types of court have great amounts of discretion and make many subjective decisions when sentencing.

Indeed, sentencing in New Jersey juvenile courts is guided by subjectively perceived criteria, such as "the juvenile's age, previous record, prior social service received and out-of-home placement history" and "whether the disposition supports family strength, responsibility and unity and the well-being and physical safety of the juvenile" (New Jersey Code of Criminal Justice 2002 §2A: 4A–43). The list of subjective factors that are statutorily prescribed as sentencing criteria allows judges great discretion in making sentencing decisions, as they are required to consider the totality of a defendant's case, including the offense, social background, family, and needs (physical, psychological, and developmental) of the defendant. According to a juvenile court prosecutor, "on this level, the juvenile level, naturally sentencing is entirely up to the judge."

This level of discretion in the juvenile court is illustrated by the following hearing, in which the judge decides to spare a defendant from incarceration because the defendant is trying to support his mother financially. After the defendant pleads guilty to a violation of probation (he had absconded from an inpatient drug treatment program to which this judge had sent him), the judge discusses possible dispositions:

Judge: Why shouldn't I sentence you to [training school for boys]? Give me one reason.

Defendant: I'm trying to help my mother.

Judge: I have to do something. If I don't, then word will get around that you can be sentenced to a drug program and leave it, without Judge [xx] doing anything about it. (to mother) What should I do?

Mother: I need his help around the house and financially.

Prosecutor: Your honor, although helping the mother is a concern, I still think the defendant deserves to go to [the training school].

Judge: I'm extending the defendant's probation. And you must go to [Alcoholics Anonymous] four times per week. Don't tell anyone about this sentence.

Here, the judge uses broad discretion to avoid incarceration based on subjective interpretations of a defendant as worthy of another chance.

Though directed by a very different statutory scheme, criminal court judges likewise exercise great discretion in sentencing. This discretion stems from their ability to categorize adolescents into a special sentencing category: "youthful offender"
(YO) status. This designation officially replaces conviction and has significant consequences—YO cases are sealed and confidential, the punishment given to YOs is limited to a maximum of four years in prison, and the designation allows the judge to depart from both the prosecutor’s sentencing recommendation and the state sentencing guidelines. According to a recent report on case processing of JO defendants in New York City, 72 percent of JOs sentenced in 2000 received YO status (Criminal Justice Agency 2001).

By giving a defendant YO status, judges allow themselves considerable discretion. As one judge stated: Because of their age, I can exercise judicial discretion beyond the prosecutorial demands for a particular plea that would constrain [other criminal courts that prosecute older offenders]. If the defendant is an adult, the prosecutor says he has to plead to the indictment—the rule of law is he has to plead to the indictment. And the judge must impose a sentence within the guidelines for that particular crime. But juveniles, almost all of them, almost all of them are tendered Youthful Offender treatment, which means the constraints of statutory sentencing are different and become within the Court’s discretion. (emphasis in original statement)

Because of the flexibility that comes with YO status, criminal court judges maintain discretion near that of juvenile court judges.

Moreover, the criteria for allocating YO status are sufficiently broad as to render this decision-making process very subjective. Adolescents under age nineteen are eligible for YO status unless they are convicted of a Class A felony (e.g., murder) or they have a previous felony conviction and sentence in the criminal court. Adolescents convicted of an armed felony offense, rape, sodomy, or aggravated sexual abuse are YO eligible if the judge can find either mitigating circumstances regarding the manner in which the crime was committed (e.g., no injury to the victim) or that the defendant was not the sole or primary participant in the crime (Warner 2000). Very few adolescents are prosecuted for Class A felonies (Criminal Justice Agency 2001), and because of their youthfulness, most are in the criminal court for the first time (thus they have no prior criminal court felony convictions). As a result, the majority of adolescents are eligible for YO status, depending on a judge’s discretionary interpretation of both the offense and the defendant’s character.

Courtroom observations illustrate that criminal court judges use this discretion freely in deciding how to sentence adolescents, including both who goes to prison and who receives YO status. In the following case, the judge tries to dissuade a female defendant who has been convicted of slashing her victim in the face with a razor from requesting a prison sentence. The judge knows that this defendant is HIV-positive and has had a difficult home life; as a result, he wants to spare her from incarceration:

[The defense attorney and prosecutor approach the judge’s bench and discuss the defendant. She is HIV-positive, cares for a child, and committed her violence on the current girlfriend of the father of her child.]

*Defense Attorney:* She feels bad and knows she should be punished. She’s afraid of getting a [treatment] program, messing up, and getting more [prison] time.
Court Context and Discrimination: Exploring Biases Across Juvenile and Criminal Courts

Judge: Have you tried to talk her out of it?

Defense Attorney: She won’t talk to me.

Judge: Ms. [xx], your attorney says you feel remorse and want to be punished. I understand you feel bad about what happened, but I don’t think that means you should go to jail. I don’t think so because of what I know about you. I don’t sit in judgment of you personally, only about what you did that day. I think there are other positive factors in your life aside from what you did. That means you probably shouldn’t go to jail. . . .

Thus, the sentencing process in criminal court involves subjective decision making that, in many ways, mirrors the subjectivity of juvenile courts. Despite the differences that exist between juvenile and criminal courts, our analysis of judicial discretion contradicts the differential bias hypothesis by finding greater similarity than expected between the two court types.

Procedural protections

Though the application of procedural rules is more relaxed in the juvenile courts we studied than in the criminal courts, all adolescents whose cases were observed were represented by competent attorneys. As a result, we once again find more similarity between juvenile and criminal courts than the differential bias hypothesis predicts.

Indeed, the juvenile courts are far less adversarial environments than the criminal courts we study. In contrast to criminal court, in which court actors frequently submit written motions regarding admissibility of evidence and defendants’ statements, legal motions are rarely filed in juvenile court. In their place, attorneys discuss their positions verbally in court. Veracity of police identification or legality of arrests are debated in court during a probable cause hearing or a trial, rather than decided based on written motions. Even more frequently, this type of issue is used informally by juvenile court defense attorneys during plea bargaining to suggest weaknesses in the prosecutor’s case as a tactic to secure a reduced sentence. Legal matters such as evidence, formal charges, and identification procedures (e.g., how a lineup was conducted) are taken much more lightly in juvenile court. For example, in one hearing we observed, the defense and prosecution could not agree on how many charges were pending against a defendant whose case was proceeding to trial; their disagreement was due to the fact that a police report was never filed for one charge.

Yet in contrast to Feld’s (1989) critique of legal representation in juvenile court, we find that all defendants are represented by attorneys—almost all public defenders—and these attorneys offer first-rate legal counsel. Rather than being subordinated as public defenders in a lowly juvenile court system, these defense attorneys are experienced lawyers (the newest public defender has been at this job for more than ten years) who enjoy working with juveniles and express pride in practicing aggressive legal advocacy. Several of these attorneys bragged during interviews that they have large caseloads because they struggle to obtain lenient sentences rather than pleading quickly. Furthermore, these attorneys are able to
organize themselves and project a collective threat of taking more cases to trial as a negotiation strategy:

*Attorney:* One thing that we have at our disposal, which results in our getting as quick a result as we do, is the fact that we have an option to request or demand a trial that would take so long and which would totally collapse the system. In order to keep us from doing that, the plea bargains have to be lenient enough for us to take them.

*Interviewer:* Do you think the kids benefit from them?

*Attorney:* Absolutely.

*Interviewer:* Because of the threat of going to trial, they get lower dispositions than they otherwise would?

*Attorney:* Absolutely. In fact, any time something comes along . . . we’ve had a couple of times in the past that something happened that we didn’t like, we would just threaten to put everything on trial and usually that’s an effective means of at least getting more dialogue.

This aggressive approach to defending adolescents protects them from the potential hazards of the less formal procedures, greater discretion, and broader range of subject matter discussed in juvenile court than in criminal court.

In contrast to the procedurally informal setting of the juvenile court, early stages of case processing in criminal court are very formal, as we discussed earlier. The criminal court actors discuss evidence in an adversarial, procedurally formal setting. Oftentimes, when a case first appears in court, the judge will set a hearing schedule to determine when attorneys will file which legal motions and dates for deciding outcomes. All significant debates are handled this way, rather than discussed openly as in juvenile court. However, the tenor of hearings changes during the sentencing stage of criminal court processing. Courts still follow procedural rules, but their adherence to an adversarial model is much less thorough, and court actors are allowed broader discretion in straying from formal procedural rules; they follow a sequential justice model that varies by stage of case processing (see Kupchik 2006). For example, during sentencing, judges often speak to defendants and demand their participation in court hearings. Judges also open up sentencing hearings to include treatment professionals (e.g., counselors, drug treatment professionals) who may be able to help the defendants. These practices are very different than the earlier stages of case processing, during which court interaction is limited to only the trained legal professionals. As a result, the level of procedural protections for adolescents in the sentencing stage of criminal court is fairly similar to the protections offered in juvenile court.

With regard to legal representation, the quality of defense attorneys in criminal court is high, though their influence over case processing is relatively less than that of the juvenile court public defenders. This is because the criminal court defenders are a less coherent group of individuals. There are several distinct groups of defense attorneys, including the Legal Aid Society attorneys, (County) Defender Services attorneys (an organization very similar to Legal Aid Society),
“18B” attorneys (private lawyers who assume indigent cases and are paid an hourly wage by the court), and private attorneys who are paid by defendants. The vast majority of defendants are represented by one of the first three groups. Compared to the juvenile court attorneys, there is a much larger and less coherent group of criminal court defense attorneys who work for different agencies and appear before many different judges in the criminal court system (there is no specialization for adolescent offenders). As a result, these criminal court attorneys are unable to organize and exert the same influence over the court as the juvenile court attorneys. Therefore, the relative cohesion and aggressiveness of the juvenile court defense attorneys minimize the potential bias in juvenile court caused by less rigid procedural protections, and our results once again contradict the assumption that biases are more imposing in juvenile than criminal court.

CONCLUSION

The purpose of this article is to explore racial/ethnic and gender biases across juvenile and criminal courts. Much of the prior research on this issue finds that the construction of guilt and culpability in both juvenile and criminal courts often is shaped by stereotypes and biases (see Zatz 2000). Yet it is necessary to move beyond this realization and toward a better understanding of how such biases might find room for expression across different institutional contexts.

In the quantitative analysis, we find that both sex and race/ethnicity seem to be related to court outcomes. Males are more likely to be incarcerated than females in both court types, and Whites are less likely to be incarcerated than either Latino/as or African Americans. Yet the results fail to confirm that either sex or race/ethnicity has a disparate effect on court outcomes across juvenile and criminal courts. Overall, criminal courts are more likely to incarcerate youth than juvenile court (see Kupchik, Fagan, and Liberman 2003), but the relative risk of incarceration for either female or non-White adolescents does not seem to vary as a function of court type. The qualitative analysis coincides with the quantitative results and also fails to support the differential bias hypothesis. We find that there is a much broader array of information discussed in juvenile court than in criminal court throughout most of case processing. And the procedural safeguards in place in criminal court are more stringent and more formally adhered to than any safeguards in juvenile court. Yet the similarity of sentencing practices across the two court types and the aggressive legal defense provided to juvenile court defendants minimize the impact of these potential hazards. Thus, the particular features of court communities seem to minimize the potential harm of juvenile courts. This does not mean that racial/ethnic and gender stereotypes do not shape the construction of culpability in the two court types; as we discussed earlier, for example, there is evidence of gender bias in both court types. Yet we do not find evidence to support predictions that the institutional context of juvenile courts creates more room for biases to shape case processing.

These results suggest two important contributions to debates about juvenile justice policy. One, our results contradict a primary justification offered in defense of transferring youth to criminal court: that it helps avoid the greater racial/ethnic
and gender bias of the juvenile court. This study thus adds to a growing body of work that negates the professed advantages of transferring large numbers of youth to criminal court (see Kupchik 2006). Two, our work demonstrates that aggressive and competent legal defense is crucial to adolescents in any type of court, especially juvenile courts. The defense attorneys in juvenile court are able to minimize the potential impact of discussing a broad array of information about defendants during earlier stages of case processing. The presence of competent and aggressive attorneys is crucial in juvenile courts where peripheral information about defendants is likely to be discussed. Given prior research that many adolescents in juvenile courts go without any legal representation (Feld 1989; see also American Bar Association 1995), this conclusion is an important reminder of the necessity of attorneys within juvenile courts.

It is important to note that, to some extent, the lack of evidence for the differential bias hypothesis may be a result of prioritizing the sentencing stage of case processing. Recall that the distinctions between case processing in juvenile and criminal court is larger prior to sentencing—there may be a correspondingly larger differential impact of race/ethnicity and sex in earlier stages of case processing as well. Given that only 13 percent of the juvenile court sample and 5 percent of the criminal court sample are cases of White adolescents, it seems likely that White adolescents are screened out by police officers or intake officers, thus removing them from the population of court cases (Bishop and Frazier 1988; Dannefer and Schutt 1982; Sealock and Simpson 1998). The importance of discrimination in earlier stages of case processing does not invalidate studies of sentencing; rather, it emphasizes the need to study each phase of case processing to better understand the role of discrimination across court contexts. Furthermore, although this potential screening process could partially mask direct effects of race/ethnicity on sentencing, it is unlikely to profoundly affect the relevant comparisons we make, as the screening appears likely in both the juvenile and criminal court samples we compare. Further research should test for such discrimination across jurisdictions at other decision-making junctures, such as the decision to arrest, to prosecute, to detain, or to convict (National Research Council and Institute of Medicine 2001).

Further research on this topic in other jurisdictions would also help determine the generalizability of our results. In particular, future research should test the analytic dimensions we develop here in jurisdictions with larger populations of White and female defendants, to help understand the effects of race/ethnicity and sex on case processing and outcomes. Studying courts in jurisdictions that vary by broader contextual factors (size of jurisdiction, political climate, and punishment regimes) would be beneficial as well. Additionally, studies comparing juvenile courts to criminal courts without sentencing provisions such as YO status—the sentencing category that reintroduces discretion into the criminal courts we study—would help establish generalizability of our results. Yet we are confident that our results are indeed generalizable to other jurisdictions, as we compare a traditional juvenile court system to a criminal court system that mirrors recent changes in transfer statutes. New York’s method of excluding adolescents from the juvenile court is one of the most rapidly proliferating juvenile transfer methods, as a number of states have recently lowered their jurisdictional boundaries
between juvenile and criminal courts and excluded greater numbers of offenders from juvenile court by statutory exclusion (Feld 1999). Additionally, the YO status that we discuss here is very similar to a blended sentencing approach to punishing adolescents in the criminal court, an approach that also has proliferated in recent years (Redding and Howell 2000). Thus, the character of each state’s jurisdictional boundary between juvenile and criminal court enhances the likelihood of these results being generalizable to other jurisdictions. However, we should note that generalizability of the particular results we find is not the goal of this article. As our analyses show, it is important to understand the actual practices of individual court communities, rather than generalizing about the differences between juvenile and criminal courts, if one wants to understand the potential for racial/ethnic and sex discrimination within courts.

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NOTES

1. The data that we analyze in this article come from police reports, which do not distinguish between race and ethnicity. These data also offer no details within each category (e.g., African American vs. Caribbean American, White Latino/a vs. Black Latino/a). As a result, we are unable to analyze the differential impact of race and ethnicity on courtroom decision making. Thus, we use the term race/ethnicity to refer to both concepts.

2. Focusing on the sentencing phase of case processing allows for suitable comparisons across juvenile and criminal courts. Comparing other phases of case processing introduces structural dissimilarities in decision-making options that are minimized when comparing the imposition of punishment. Yet as we note later, it has the disadvantage of following prior phases of case processing that may have filtered out variations in cases. As some have noted, the impact of race/ethnicity or gender may be largest early in case processing, at arrest, or in decision to prosecute (National Research Council and Institute of Medicine 2001).

3. The two states are similar criminal justice climates as well; the comparability of their sentencing laws demonstrates that the two states’ criminal justice systems punish comparable offenders fairly similarly. For example, an adult who is sentenced for a first armed robbery may receive a maximum prison sentence of up to twenty years in New Jersey and up to twenty-five years in New York. In sum, the sample includes cases from two states within a similar criminal justice and social milieu.

4. The data are taken from a larger data set collected under the supervision of Jeffrey Fagan and were assembled from a variety of sources. The New Jersey Administrative Office of Courts provided data for one of the three counties. For the other two New Jersey counties, data were manually collected from case files of sampled individuals by a
5. It is advantageous to sample felonies because they are more likely to be similarly defined and enforced across jurisdictions than less serious offenses, such as drug offenses or misdemeanors. However, sampling felony cases may pose risks as well. Prior studies have found that racial/ethnic and gender biases are more likely to appear during processing of less serious offenses than more serious offenses (e.g., Belknap 2001; Chesney-Lind and Shelden 2004; Zatz 2000). By examining a range of offenses, including property (burglary) and violent (robbery, aggravated assault) charges and by excluding the most serious cases (homicide, rape), this risk is minimized here.

6. Despite these precautions, both states have transfer provisions that might affect the comparability of the two state samples. If the more serious cases from New Jersey are transferred (to criminal court) and thus not included here or if less serious cases in New York are transferred (down to juvenile court), then the sample might be biased. Yet this does not seem to be the case. New Jersey courts have the option to transfer adolescents up to criminal court, though prior research in the same counties with a similar sample (see Fagan 1991) has shown that this option is used extremely rarely. In the larger data set from which these data were taken, only 1.2 percent of sampled cases with the same sampling criteria as the cases here were waived from the New Jersey juvenile court to criminal court. In New York, fifteen-year-olds may be transferred down to juvenile court. However, descriptive comparisons of the fifteen- and sixteen-year-olds in the New York sample here show that they are subjected to very similar outcomes (59 percent of fifteen-year-olds are convicted and 14 percent incarcerated; 57 percent of sixteen-year-olds are convicted and 16 percent incarcerated). As a result of the infrequent use of transfer in New Jersey and the similarity of court handling of transfer eligible and ineligible cases in New York, the opportunity for transfer in these jurisdictions should not introduce a sample selection bias.

7. Because all sampled New York cases are in the criminal court and all sampled New Jersey cases in the juvenile court, court type and state are synonymous.

8. Because of the extensive time commitment required to collect qualitative data, the first author collected qualitative data in only four of the six counties sampled for quantitative data. The four counties were selected based on the proximity to each other and because (according to U.S. Census data) these counties each had the highest population density, percentage of racial/ethnic minority residents, percentage of individuals below the poverty line, and the largest gini coefficients from among the three counties in each state in the quantitative data.

9. We limit our dependent variable to a dichotomous variable indicating incarceration as opposed to any other sentence, rather than including sentence length as well, because the data for sentence length are not comparable across jurisdictions. Our data on criminal court case processing include estimated sentence lengths, with the estimate calculated as two-thirds of the maximum sentence; this estimate was computed after consulting with the New York City Criminal Justice Agency, which provided the data (see Phillips et al. 2002). Yet consistent with our discussion concerning the contextual differences between juvenile and criminal courts, New Jersey juvenile court judges prescribe indeterminate prison sentences. There is thus greater variation in actual amounts of time served, and such an estimate is less reliable. Instead, we obtained the actual custodial release date for each sampled individual and used these to calculate sentence lengths served. Additionally, we have no data on bed space in correctional...
facilities or on parole board decision making, both of which would be crucial for predicting the length of sentences that are served. Restricting our analyses to whether youth are incarcerated allows for analysis of more accurate and complete data.

10. Using a censored sample excludes from the analyses a nonrandom subset of observations. The effect of excluding this subset is to introduce a nonlinear relationship between the independent and dependent variables, in which the estimated causal relationship between them is inflated. This inflation is due to a positive correlation between the independent variables and the disturbance term, which threatens both internal and external validity of one's estimates, even when one is only concerned with values above the point of censoring (e.g., only concerned with convicted cases) (Berk 1983). The Heckman two-stage model produces parameter estimates that take into account the censoring—a censoring parameter is estimated and then incorporated into the probit analysis of the dependent variable. In doing so, it adjusts for the bias caused by a censored sample (Berk 1983).

11. All analyses are performed using STATA 8.

12. In the multivariate analyses, we regress sentencing on the natural log of both prior and concurrent arrests to reduce the positive skew of both variables.

13. Variation Inflation Factors (VIFs) were estimated with the interaction terms as well and found to be at safe levels. The highest VIF was 2.0.

14. This method, including interaction terms to test for differences across the two courts, is used over an alternative method described by Paternoster et al. (1998), whereby separate models are estimated for each sample and the coefficients compared using a t test. Using interaction terms in nested equations produces identical results but is a more parsimonious test and thus reduces the likelihood of making a Type I error by chance.

15. Because of the gap between the quantitative and qualitative data collection—the quantitative data are of cases in 1992 and 1993, and the qualitative data were collected from 2000 to 2002—we also analyzed more recent data. The more recent data were provided by New York's Department of Criminal Justice Services and New Jersey's Administrative Office of Courts and included all defendants with relevant sampling criteria described above for the first sample. Because these data contain fewer variables than the first data set, we use them only to affirm that court outcomes did not change drastically between 1992–1993 and 2000–2002. Descriptive court outcome results of these more recent data (available on request) are very close to the results of the older data set; thus, we continue with the older and more complete data.

16. We analyze the qualitative data using the program NU-DIST to sort data into relevant themes.

17. We also estimated models including interaction terms for sex with each other independent variable, as well as each race/ethnicity category with each other independent variable. Some of these maximum-likelihood models failed to converge (those including interactions with sex and with the variable indicating White defendants) because of small numbers of cases. For each of the other models, we found that adding interaction terms failed to improve the model fit beyond the log likelihood of the main effects model. This is particularly surprising given prior results showing the salience of the interaction of race/ethnicity and sex (e.g., Chesney-Lind and Shelden 2004; Daly 1994). Based on a reviewer's suggestion, we conducted a power analysis to determine if we had sufficient power to detect differential bias at the .05 alpha level. Using G*Power software, we find that for an effect size of .5 and alpha of .05, we would need to have categories with at least fifty-one cases in them. Given that our smallest category, White youth, has fifty-eight cases, this means our analyses may be weak but acceptable.
18. This hearing occurred prior to sentencing, the phase of case processing on which we focus our analysis. We include it here because during this hearing, information against the defendant (drug use, poor school attendance) is introduced onto the official court record and can be used against the defendant during sentencing.

19. Though no figures are available to illustrate how often defendants are able to hire attorneys, our observations and conversations with court staff suggest that more than 85 percent of the criminal court defendants are considered indigent and represented by one of the former three groups of attorneys.

REFERENCES


