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# THE EFFECT OF LEGAL AND EXTRALEGAL FACTORS ON STATUTORY EXCLUSION OF JUVENILE OFFENDERS

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*The study describes implementation of legislation that excludes youth offenders from juvenile court jurisdiction and examines two elements of deterrence theory that underscored the legislation's rationale. Between-court analyses comparing youths decertified to juvenile court with those remaining in criminal court report no between-court differences concerning the certainty of punishment. Although the criminal court was more likely to impose more severe sentences, controls on legal sentencing factors explained the between-group differences. Legal and extralegal factors predicted the likelihood of certainty and severity of punishment within the juvenile and adult systems respectively. Implications for the restorative justice model are discussed.*

**Keywords:** *youth violence; statutory exclusion; deterrence theory*

Since the early days of the juvenile court, legal mechanisms have been in place to remove certain habitual and violent offenders from the protection of the court and punish them with adult penalties. The exclusion<sup>1</sup> of certain youth offenders from the protections and immunities of the juvenile justice system meant that instead of being diverted from the criminal court these individuals faced the legitimate criminal sanctions warranted for committing chronic and/or serious crimes (Sanborn, 2003). The idea behind the juvenile court was that it served as a diversionary system of justice that considered the special characteristics of childhood and the absence of sufficient culpability among most young offenders who were likely to respond favorably to rehabilitation (Howell, 1997; Sanborn, 1994, 2003). The variety of rationales for exclusionary mechanisms have included general (reduction of delinquency), and specific (reduction of recidivism) deterrence, retribution for serious crimes, greater community protection, as well as preservation of the juvenile court and its policy of rehabilitation (Mears, 2003; Sanborn, 2003). Public concern about recent increases in chronic and violent youth offending (Blumstein, 1995; Empey, 1979; Fox, 1996; Sickmund, Snyder, & Poe-Yamagata, 1997; Snyder & Sickmund, 1999) has led to the widespread passage of legislative reforms that have increased the types and numbers of

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exclusionary mechanisms. (For a comprehensive review of exclusionary mechanisms currently in use by states, see Griffin, Torbet, & Szymanski, 1998; Sanborn, 2003).

It is interesting to note, these so-called get tough initiatives have increased in spite of the fact that serious youth crime has decreased in recent years (Butts & Travis, 2002; Snyder, 2003; Whitehead & Lab, 2004) because reducing serious youth crime was a driving force behind these reform efforts. For example, between 1994 and 2001 the juvenile arrest rate for Violent Crime Index offenses (murder, rape, robbery, and aggravated assault) fell 44% (Snyder, 2003). Moreover, the decline was consistent during this 7-year period.

Currently, a variety of mechanisms are available to treat juveniles as adult offenders. These may include blended sentencing, direct file provisions, judicial waiver, and statutory exclusion (Griffin et al., 1998; Mears, 2003). Blended sentences involve sentencing a youth offender in juvenile court to adult sanctions. Direct file provisions give prosecutors the discretion to determine whether to initiate a juvenile case in criminal court.

Judicial waiver involves a range of processes that may allow juvenile court judges the discretion to transfer offenders to criminal court if they meet specific threshold criteria as spelled out in the *Kent* (see *Kent v. United States*, 1966) and later in *Breed v. Jones* (1975) decisions. In addition to discretionary judicial transfer, some states (including Pennsylvania) employ a presumptive judicial waiver requirement that assumes that cases will be waived unless a compelling argument can be presented to prevent the transfer (Mears, 2003). Under Pennsylvania's judicial waiver guidelines (see *The Pennsylvania Juvenile Act*, 1995, Sec. 6355), the burden of proof is on the juvenile to establish that he or she is still amenable to treatment through juvenile court services. If a juvenile meets certain statutory criteria and fails to make an adequate argument against transfer, the case must be sent to criminal court. Fourteen states also provide for mandatory judicial waiver in cases that meet certain age, offense, and other criteria (Griffin et al., 1998; Mears, 2003). Such proceedings are similar to statutory exclusion except that the juvenile court has original jurisdiction and conducts a preliminary evaluation to determine if the case meets the mandatory waiver statute. If this is the case, the juvenile court then issues an order transferring the case to the criminal court.

Under statutory exclusion, cases that meet certain age, offense, or other criteria are processed directly by the criminal courts, bypassing the juvenile system completely. Pennsylvania's Juvenile Act was amended in 1995 as *Act 33 of 1995*, (hereto known as *Act 33* or the *Act*) to include a statutory exclusion mechanism. *Act 33* excludes two categories of offenders from the juvenile court process; (Tier I) juveniles ages 15 to 18 years alleged to have committed a violent offense with a dangerous weapon and, (Tier II) juveniles ages 15 to 18 years who are repeat violent offenders.<sup>2</sup> Because Pennsylvania already has discretionary and presumptive judicial waiver provisions in its existing code, the *Act* implicitly provides for prosecutorial discretion (because district attorneys have control over the types of charges filed) to move juveniles into the adult justice system. The creation of a statutory exclusion mechanism is only one part of the sweeping reforms covered in the *Act 33* legislation. The *Act* also includes language that allows the public to attend juvenile court hearings for certain serious offenses and permits easier access to juvenile court records. The *Act* authorizes fingerprinting and photographing of juvenile defendants along with DNA testing of adjudicated sexual offenders. The courts are now required to notify schools concerning the dispositions of juvenile court cases while policies in handling truants have been revised. *Act 33* has also mandated the statewide implementation of the restorative justice model. (For a description of the elements of restorative justice, see Van Ness & Heetderks-Strong, 2002).

The abundance of diverse waiver options has been cited by scholars (Dawson, 2000; Mears, 1998, 2003) as evidence of a lack of a coherent policy concerning youth exclusion. Mears (2003) pointed out that court sanctions occur within the context of a broader, self-correcting system with changes in one part offset by changes in another. He illustrated this point by citing conclusions from a preliminary analysis of our current data on Pennsylvania's statutory exclusion legislation (*Act 33*) as reported by the National Center for Juvenile Justice (see Snyder, Sickmund, & Poe-Yamagata, 2000).<sup>3</sup> Snyder and his colleagues (2000) pointed out that because of the substantial number of dismissals and decertifications to Juvenile Court, *Act 33* is merely a parallel system of exclusion (along with the existing judicial waiver mechanism) that only complicated Pennsylvania's youth exclusion process.

The purpose of the current study was to examine the overall effect of *Act 33* including a description of the youth offenders processed under this legislation as well as sentencing outcomes in the justice system. The current study then examined two elements of deterrence theory by determining whether the *Act* ensures greater certainty and severity of punishment. This was accomplished by comparing a sample of juveniles retained in the adult system with those who successfully petitioned to have their cases decertified to juvenile court. In conclusion, the current study examined the effect of legal and extralegal factors in the juvenile and adult judicial processes.

## Literature Review

### *Exclusion as a Deterrence Mechanism: Reality or Rhetoric?*

During the 1960s and 70s juvenile justice policy debates focused mainly on the front end of the juvenile justice system concerning such issues as decriminalization of status offenders, due process for juveniles, deinstitutionalization, and diversion (Howell, 1997). However, the increase in youth crime prompted a shift in the administration of justice driven by the deterrence model commonly known as the just desserts reforms.

In the aftermath of the wave of legislative reforms, how effective have the exclusion laws been in deterring chronic and violent youth crime? Has the reality matched the rhetoric? The extant literature suggests that it has not. Researchers have highlighted some of the unintended consequences of the exclusion process and the long-term incarceration of youth offenders that includes the net widening by prosecutors that arbitrarily transfers categories of juveniles into the adult system (Mears & Field, 2000), the systematic discrimination of minorities (Mears, 2003; Walker, Spohn, & Delone, 2004), the victimization of juveniles in adult prisons (Howell, 1996), the exacerbation of offenders' sense of injustice (Mears, 2003; Singer, 2003), the reduction of economic opportunities (Singer, 2003), even the probability of less severe sentences for certain crimes (Bortner, 1986; Podkopacz & Feld, 1996a), all of which can contribute to increasing the likelihood of recidivism. Moreover, there is evidence (Fagan, 1996; Myers, 1999; Winner, Lanza-Kaduce, Bishop, & Frazier, 1997) indicating that youth who are excluded have higher recidivism rates compared to youth retained under juvenile court supervision. (For a comprehensive review of the unintended impacts of exclusion, see Mears, 2003.)

Redding's (2003) review of the literature indicates that it remains unclear whether exclusion laws actually deter youth crime. He cited studies from Idaho's automatic transfer statute (see Jensen & Metzgar, 1994) and New York's juvenile offender law (see Singer, 1996; Singer & McDowall, 1988) reporting no deterrent effects of these mandatory exclu-

sion laws on the reduction of violent juvenile crime. However, Redding (2003) also cited economic analyses (see Levitt, 1998) along with anecdotal accounts that report substantial decreases in youth offending when states lower the age of criminal court jurisdiction. In terms of face validity, the studies questioning the effects of mandatory exclusion appear to have the edge because they are better designed (e.g., using comparison groups and longitudinal analyses). Nevertheless, Redding's (2003) illustrations are limited to only one type (i.e., mandatory exclusion) of exclusion mechanism. However, there is ample evidence (see Howell, 1996; Verrecchia, 2003) that judicial transfer produces higher conviction and incarceration rates than statutory exclusion.

Earlier studies support current research (Mears, 2003; Redding, 2003) indicating that severe treatment of juvenile offenders in the criminal justice system does not necessarily ensure greater community protection and may pose a number of unintended consequences in contrast to the arguments presented by deterrence advocates. At best, there has been inconsistent support that the deterrence model actually fulfills its promise to guarantee certainty and severity of punishment (Bortner, 1986; Champion, 1989; Fagan, 1995; Farrington, 1977; Kinder, Veneziano, Fitcher, & Azuma, 1995; Myers, 2001; Podkopacz & Feld, 1996b; Tittle & Rowe, 1974; Wolfgang, Figlio, & Sellin, 1972; Zimring & Hawkins, 1973). Moreover, the evidence seems to suggest that it is unlikely to guarantee swift punishment either (Kinder et al., 1995; Myers, 2001).

#### *Earlier Versus More Recent Studies*

Earlier studies described youths who were excluded as committing less serious offenses, generally property crimes, and subject to lenient sanctions in the criminal justice system (Barnes & Franz, 1989; Bishop, Frazier, & Henretta, 1989; Bortner, 1986; Champion, 1989; Fagan, Forst, & Vivona, 1987; Gragg, 1986; Hamparian et al., 1982; Heuser, 1985; Houghtalin & Mays, 1991; Lemmon, Sontheimer, & Saylor, 1991; Rudman, Harstone, Fagan, & Moore, 1986). In a national study of youth transfer in the 1970s, (Hamparian et al., 1982) reported that the majority of youths who were excluded were older White (even though minorities were overrepresented) males. Property offenses made up most of the referrals, and although most were convicted or pled guilty, they were more likely to receive probation and fines rather than incarceration.

Bortner (1986) reported that more than 60% of transferred offenders were charged with property crimes. Of those convicted, 63% received probation. Of those incarcerated, slightly more than one-half spent a year or less time in jails or prisons. Bortner found little evidence to indicate that the excluded youths were serious offenders or faced serious penalties. Transfer decisions seem to be driven by political considerations particularly the public's fear of crime.

In a study of Florida's direct file statute, Bishop et al. (1989) found that the majority of the youths who were excluded were White males older than age 17 years, and almost one fourth (23%) were first-time offenders. In terms of offense criteria, less than 30% met the criteria for dangerousness, while 55% were charged with property felonies. Although the vast majority was convicted in criminal court (96%), only 61% received sentences of incarceration.

An earlier Pennsylvania study (1986) on judicial transfer (Lemmon et al., 1991) reported the same findings. Juveniles tried in adult court were generally males, age 17 or older, and disproportionately comprising minorities. The criminal court conviction rate was 89%, one of the highest reported rates.<sup>4</sup> However, the vast majority of incarceration sen-

tences (67%) were limited to terms of county jail confinements. The average length of sentence was less than 20 months including state prison and county jail terms, with the average length of county jail sentence less than 10 months. Lemmon et al. (1991) also reported that youths convicted for violent crimes faced long-term prison sentences (in excess of 3 years). Others (Barnes & Franz, 1989; Houghtalin & Mays, 1991; Rudman et al., 1986) reported similar findings.

The early research suggested that a "leniency gap" (see Myers, 2003) existed in that the criminal courts were inclined to dispose of first-time, less serious youth offenders with terms of probation whereas juvenile court dispositions tended to be harsher for comparable offenses. Much of the earlier research suggested the juvenile court was implementing the deterrence model more effectively than the criminal justice system. Moreover, recent evidence from comparative studies presented in Redding's review (2003; see Fagan, 1996; Myers, 1999, 2001; Podkopacz & Feld, 1996a; Winner et al., 1997) suggests that youths who were excluded are more likely to recidivate compared to comparable groups of youths who are delinquent. This provides additional support for the policy of maintaining certain offenders who are high risk in the juvenile justice system.

Recent evidence (DeFrances & Strom, 1997; Myers, 2003; Snyder et al., 2000) indicates a trend toward greater violence among juvenile exclusion cases. As part of a four-state study of judicial waiver, Snyder and colleagues (2000) compared two cohorts of transferred offenders in Pennsylvania in 1986 (see Lemmon et al., 1991) and 1994. Snyder (2000) reported that the number of violent crimes waived in Pennsylvania increased by 32%. The increase in violence contributed to an 84% increase in the number of transfers, a 16% increase in the number of state prison sentences, and a 27% increase in the average length of incarceration. Similar results were reported in reviews of South Carolina and Utah's judicial waiver provisions.

In a study of the deterrence effects of judicial waiver in Pennsylvania, Myers (2003) employed a comparison group design that controlled on legal and extralegal factors in examining the swiftness, certainty, and severity of punishment in the criminal justice system. Although youths who were excluded were not punished swiftly, they were more likely to be convicted, and when convicted were more likely to be incarcerated and experienced longer periods of confinement in comparison to youths retained in the juvenile justice system. However, Myers concluded that this is by no means an endorsement of the criminal court's version of the deterrence model because more than one half (57%) of the youths who were excluded were returned to the community within 4 years after their initial arrest. Moreover, Myers mentioned some of the unintended impacts of youth exclusion including the inferior clinical services offered in prisons or the victimizations of young prisoners, citing these as factors that will likely increase the chance of serious recidivism as these young men are returned to society after brief, unproductive, and traumatic periods of imprisonment.

#### *Effect of Extralegal Factors on the Exclusion Process*

Redding (2003) pointed out that justice by geography is endemic in the judicial process. His review cites evidence (see Howell, 1996) that exclusion, conviction, and incarceration rates vary widely between and within state jurisdictions. Barnes and Franz's (1989) study of urban courts in California reported that adult waiver sentences tended to rely on legal factors, particularly the severity of the current offense. Hagan (1977) also reported that larger, urban courts emphasize the legal factors of the case and make decisions based on the severity of the offense; whereas, courts that are less bureaucratized tend to rely on extrale-

gal factors such as age, employment status, and demeanor. Poulos and Orchowsky (1994) reported just the opposite. Serious youth offenders disposed in metropolitan courts were less likely to be excluded than their counterparts in nonmetropolitan courts. The conflicting findings underscore the paucity of research on the effects of judicial culture and geography on the exclusion process.

There has been consistent evidence indicating that minorities are overrepresented in the exclusion process (Barnes & Franz, 1989; Clark, 1996; DeFrances & Strom, 1997; Gragg, 1986; Hamparian et al., 1982; Kinder et al., 1995; Snyder et al., 2000). The studies imply that minority youths are victims of discrimination. However, overrepresentation might be explained as a function of minority youths committing more serious crimes and having more extensive criminal records. Studies (Fagan et al., 1987; Lee, 1994; Poulos & Orchowsky, 1994; Singer, 1993) that have controlled on legal factors including offense severity and prior record indicate that race is an insignificant factor in the exclusion process. Age appears to be a more consistent predictor of exclusion with evidence suggesting that older youths are more likely to be transferred than younger ones (Heuser, 1985; Lemmon et al., 1991; Poulos & Orchowsky, 1994).

The research indicates that excluding youths from the juvenile court is often a political solution to a complex social problem (Feld, 1995). The efficacy of deterrence policies has also been questioned. Because there have been limited opportunities to compare equivalent groups of youth offenders in the juvenile and adult systems it is most advantageous to examine the deterrence model under these conditions to determine if the adult system provides greater certainty and severity of punishment. The political nature of statutory exclusion raises questions about the effect of extralegal factors, including court of jurisdiction, age, and particularly race, in the adult court process. These factors warrant further examination as well.

#### *Methodological Limitations*

Our knowledge of the effects of exclusion mechanisms was limited by the inconsistencies in the findings, which can be attributed, in part, by faulty research designs. Some of the research suffered from methodological flaws including small samples (Gillespie & Norman, 1984; Heuser, 1985; Houghtalin & Mays, 1991), samples of limited generalizability (Barnes & Franz, 1989; Bortner, 1986; Fagan et al., 1987; Rudman et al., 1986), those derived from convenience samples with unclear representativeness (Houghtalin & Mays, 1991) or comparison group designs of questionable quality (Kinder et al., 1995; Podkopacz & Feld, 1996b) studies featuring circumscribed categories of offenders (Fagan et al., 1987; Rudman et al., 1986) or others limited to descriptions of offender characteristics (Barnes & Franz, 1989; Bortner, 1986).<sup>5</sup> The current study overcomes several of these limitations by including a large sample, and sampling the total population for a fixed period of time eliminating the problem of nonprobability sampling. The extant literature is inconclusive concerning the deterrence efficacy of youth exclusion. The current study adds to the body of knowledge on this important topic by comparing equivalent groups of youth offenders processed by the juvenile and adult courts through statutory exclusion legislation.

#### **Research Questions**

The current study examined three questions related to Pennsylvania's *Act 33*.

- What are the characteristics of the juveniles processed under the *Act* including actual sentencing outcomes in the justice systems?
- How effective was *Act 33* in implementing the deterrence goals of the statute?; that is, did juveniles processed in the adult court system receive greater certainty and severity of punishment compared to those remanded back to the juvenile justice system?
- What effect, if any, do extralegal factors have in the processing of cases between and within the juvenile and adult systems?

## **Method**

### *Background*

The current study was developed from a more general examination of judicial waiver undertaken as part of a four-state research study funded by the Office of Juvenile Justice and Delinquency Prevention and administered by the National Center for Juvenile Justice (NCJJ; see Snyder et al., 2000). The states included Arizona, Pennsylvania, South Carolina, and Utah. In Pennsylvania, the Pennsylvania Juvenile Court Judges' Commission (JCJC)<sup>6</sup> facilitated the collection of data which involved all youths statutorily excluded under *Act 33* in the first year of implementation.

### *Sample and Data Collection*

The sample comprised youths statutorily excluded under *Act 33* and processed from the day the *Act* went into effect (March 18, 1996) through the end of December of 1996. A sample of 701 cases was identified from records of county district attorney's offices, probation departments, and the NCJJ who collected information on exclusion cases in Allegheny County (Pittsburgh). In Philadelphia County, officials from the juvenile court identified exclusion cases in cooperation with the county's district attorney's office.

In the remaining 65 counties, the Administrative Office of the Pennsylvania Courts (AOPC)<sup>7</sup> identified a list of possible eligible cases. Names of those youths were forwarded to the researchers for further review. Eligible cases were identified based on type of offense and age at arrest and then forwarded to the county district attorneys for verification and update. Because the district attorneys could not identify all cases dismissed at the preliminary hearing the sample is not inclusive of all the exclusions. However, based on conversations with district attorneys across the state the number of missing cases is estimated to be small. This sample includes all cases in Allegheny and Philadelphia Counties that made up approximately two thirds of the sample.

The data collected was archival and included juvenile court history information from juvenile probation department case files. Data on the exclusion cases was collected from county district attorney records and Court of Common Pleas dockets. The courts also provided information on recidivism, which involved any official referrals of criminal offenses occurring subsequent to the exclusion offense.

Data were collected on demographic and legal factors. Demographic data included race, gender, age, and county where the incident occurred. Legal data were arranged into four categories: offense information, criminal court processing information, juvenile court processing information, and juvenile court history.



### *Independent Variables*

Group status, three legal, and four extralegal variables were employed as independent variables in the study. Group status was operationalized as three groups constituting cases that were dismissed at the preliminary hearing ( $n = 114$ ), cases that were decertified and returned to juvenile court ( $n = 198$ ), and cases that remained in the adult system ( $n = 389$ ). Cases dismissed at the preliminary hearing were included to provide a comprehensive description of the sample but were excluded from later analysis because they contained no additional data beyond that of the preliminary hearing. The first inferential analyses involved comparisons of the juvenile and adults groups in two areas of deterrence theory including certainty and severity of punishment. This was followed by a series of within-group analyses of the effects of legal and extralegal factors on certainty and severity of punishment in the juvenile and adult courts respectively.

The three legal variables included weapon use, seriousness of offense, and a juvenile court history index. Weapon use was defined as whether a weapon was used in the commission of the *Act 33* offense. It was coded as 0 (no) or 1 (yes). Seriousness of offense comprised aggravated assaults and robberies and was coded as 0 and 1, respectively. Robbery was treated as a more serious offense because it included theft and assault and is rated as a more serious crime in the Pennsylvania Sentencing Guidelines. The juvenile court history index was constructed from five juvenile court history variables. These variables were dichotomously coded yes or no to questions concerning whether the subject had a prior juvenile court referral, a prior adjudication of delinquency, a prior adjudication for a felony-level violent offense, a prior adjudication for a firearms offense, and a prior placement for a delinquency offense. The index ranged from 0 to 5.

Four extralegal factors included race coded as 0 (White) or 1 (non-White), gender coded as 0 (female) and 1 (male), age defined as the age of the youth at the time of arrest, and court of jurisdiction comprising two reference variables. A dummy coded variable was constructed that compared Metropolitan County West ( $n = 104$ ) with the remainder of the state ( $n = 597$ ), and a second dummy variable was constructed that compared Metropolitan County East ( $n = 350$ ) with the remainder of the state ( $n = 351$ ).

### *Dependent Variables*

Six dependent variables examined two of the dimensions of deterrence, certainty and severity of punishment. Certainty of punishment was dichotomized based on whether the case was dismissed at either the juvenile or adult court (coded 0), or whether guilty in either the juvenile or adult court (coded 1). In the analysis of 511 cases, 27% ( $n = 138$ ) were dismissed in juvenile or adult court, and the remaining 73% ( $n = 373$ ) were found guilty. Severity of punishment was dichotomized based on whether the case received a sentence of probation by either the juvenile or adult court (coded 0), or whether sentenced to incarceration by either the juvenile or adult court (coded 1). In the analysis of 361 cases, 25% ( $n = 90$ ) received a sentence of probation in juvenile or adult court and the remaining 75% ( $n = 271$ ) were sentenced to a term incarceration by either juvenile or adult court.

Certainty of punishment in juvenile court was dichotomized based on whether the case was dismissed (coded 0) or resulted in a finding of guilt in the juvenile court (coded 1). In a review of 184 valid cases, 45 (24%) were dismissed and 139 (76%) were adjudicated. Certainty of punishment in adult court was dichotomized based on whether the case was

dismissed (coded 0) or resulted in a finding of guilt in the adult court (coded 1). In a review of 327 valid cases, 93 (28%) were dismissed and 234 (72%) were found guilty.

Severity of punishment in juvenile court was dichotomized based on whether the adjudicated case resulted in probation (coded 0) or in an out-of-home placement disposition (coded 1). In a review of 138 valid cases, 61 (44%) were placed on probation and 77 (56%) were placed in a facility for delinquent offenders. Severity of punishment in adult court was dichotomized based on whether the guilty verdict resulted in probation (coded 0) or an incarceration sentence (coded 1). In a review of 223 valid cases, 29 (13%) were placed on probation and 194 (87%) were incarcerated in a jail or prison facility.

### *Analytical Plan*

The analytical plan proceeds in three parts beginning with a description of the sample, an analysis between the two courts, and an analysis within each court. Part 1 is essentially a univariate analysis of court processing (addressing our first research question).

The second part, the between-court analysis, compares the juvenile and adult court groups on the certainty and severity of punishment (our second research question) and also examines the effect of extralegal and legal factors to explain any between-court differences. Certainty of punishment is initially examined through a bivariate logistic model by testing the association between group status and the probability of guilt. If no association is uncovered, the analysis will be terminated because there is no between-court difference on this dimension. If an association is found, a second logistic model will be employed using group status and extralegal factors rather than the legal factors. The rationale for doing so is based on the assumption that at this stage of the judicial process innocent or guilt is determined based on elements of probable cause, (e.g., witnesses, physical evidence) rather than elements of sentence disposition (e.g., type of offense, prior record).<sup>8</sup> Extralegal factors (such as race) should have no effect on the certainty of a guilty verdict if the justice system is unbiased. Severity of punishment will also be initially investigated through a bivariate logistic model, examining the association between group status and the probability of incarceration. If no association is uncovered, the analysis will be terminated as well. If an association is established, legal factors will be included to account for between-court differences. The rationale for entering the legal rather than the extralegal factors is based on the assumption that at this stage of the judicial process factors such as seriousness of the offense or prior record should be taken into account in the court's sentencing decision. These factors might account for variation in the sentencing between adult and the juvenile court. If the legal variables account for group differences the analyses will be terminated. If no effect is found, a third model will be employed that includes extralegal factors serving as controls.

Part 3, the within-court analyses, looks at the juvenile and adult court for variation in certainty and severity of punishment respectively based on extralegal factors (our third research question). Analysis of certainty of punishment employs a model that includes only extralegal factors because at this stage of the judicial process guilt or innocence is based on probable cause. As before, the rationale is that extralegal factors should not have an effect on the certainty of a guilty verdict if these justice systems are unbiased. On the other hand, in the analysis of severity of punishment, legal factors are entered first followed by extralegal factors. The rationale in this case is that legal factors should have an effect on the severity of punishment. Extralegal factors will be entered next as controls to assess whether they can account for any effect not attributable to the legal factors.

TABLE 1  
Sample Characteristics

<i>Descriptors</i>	<i>Case Dismissed at Preliminary (n = 114)</i>	<i>Returned to Juvenile Court (n = 198)</i>	<i>Remained in Adult Judicial System (n = 389)</i>	<i>Total (n = 701)</i>
% Male	82.3	87.5	89.6	87.8
% Non-White	85.6	71.5	84.1	80.7
% Metro East	43.0	50.0	51.9	49.9
% Metro West	30.7	21.2	6.9	14.8
Average age at arrest (years)	16.38	16.12	16.08	16.14
Average juvenile court history index score	1.78	1.49	1.94	1.79
% Charged with aggravated assault	57.1	57.1	44.7	50.2
% Charged with robbery	36.0	40.9	50.1	45.2
% Used weapon in offense	98.2	92.1	96.6	95.5
% Convictions		19.8	33.3	53.2
% Incarcerated		10.9 (Juvenile facilities)	12.6 (Jail) 15.1 (State prison)	38.6

## Findings

### *Sample Characteristics*

Table 1 provides a summary of the sample characteristics. The sample ( $N = 701$ ) was predominantly male (87.8%) and non-White (80.7%). Nearly two thirds of the cases (64.7%) were from two counties Metro East (49.9%) and Metro West (14.8%). The remaining cases came from 33 of the remaining 65 counties in the state. The average age of the youths at the time of their arrest was approximately 16 years, 2 months. The average juvenile court history index score was 1.79 on the 5-point scale. Roughly two thirds of the sample had at least one prior juvenile court referral. The vast majority committed the crimes of aggravated assault (50%) or robbery (45%), while roughly 96% used a weapon in the commission of the offense.

Of the sample ( $N = 701$ ), 114 cases (16%) were dismissed at the preliminary hearing leaving ( $n = 587$ ) for further processing. Of the 587, 198 successfully petitioned to have their case remanded to juvenile court. Of these, 14 are missing data leaving 184 cases. Of the 184, 45 were dismissed in juvenile court and 139 were substantiated. Of the 139 juvenile court substantiations, 1 is missing data leaving 138 cases. Of these, 61 received probation and 77 placements.

Of the 587 retained for processing after the preliminary hearing, 389 remained in the adult court. Of these, 62 have missing data (because of ongoing case processing) leaving 327 cases. Of the 327, 93 were dismissed and 234 found guilty. Of the 234 found guilty, 11 have missing data leaving 223 cases. Of these 223, 29 received probation and 194 received incarceration as their most serious sentence. Of the 194 incarcerated, 88 received county jail and 106 state prison terms.

TABLE 2  
 Logistic Regression Coefficients Representing Estimating Effects of Juvenile and Adult  
 Group Status and Legal Factors on the Likelihood of Incarceration

	b	SE	Odds Ratio	b	SE	Odds Ratio
Group status	1.67***	.263	5.30	1.56***	.289	4.76
Juvenile court history				.366***	.097	1.44
Seriousness of offense				.584*	.291	1.79
Weapon use				1.08*	.562	2.95
Constant	.233	.171	1.26	-1.54**	.592	.21
-2 Log Likelihood		361.816			301.709	
Cox & Snell $R^2$		.114			.180	
Nagelkerke $R^2$		.169			.266	
Model $\chi^2$		43.64***			64.28***	
df		1			4	
% Correct		75.1			79.3	
N		361			323	

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

In summary, roughly 20% of the sample was adjudicated in juvenile court while an additional 33% were found guilty in criminal court. In terms of incarceration, 11% were placed within juvenile facilities, less than 13% were incarcerated as adults in jails, while 15% were incarcerated in state prison facilities. The rate of adult convictions and incarcerations was substantially lower than those reported in recent national surveys of criminal court outcomes on exclusion cases (see Rainville & Smith 2003; Strom, Smith, & Snyder, 1998) reporting conviction rates of at least 59% and incarceration rates of at least 64%.

#### *Between-Group Analysis*

*Certainty of punishment.* A simple bivariate logistic regression analysis between group status and conviction in court revealed no significant association. The conviction rate in juvenile court, 76%, was slightly higher but statistically nonsignificant to the conviction rate in criminal court, 72% ( $b = -.205$ ,  $SE = .211$ , Odds = .815).

*Severity of punishment.* Group status was a significant factor in the bivariate and multivariate logistic models measuring the probability of incarceration. Youths who remained in the adult court system were significantly more likely to be incarcerated. Legal factors including juvenile court history, seriousness of offense, and weapon use in the commission of the offense were significant as well. These legal factors might explain the between-court differences. These data are presented in Table 2 and provide the basis for three prediction models of incarceration. The following characteristics were examined in the first model: the youth had been returned to the juvenile court, had the lowest possible juvenile court history index score (zero), committed an aggravated assault, and did not use a weapon in the commission of a crime. The probability of incarceration under these conditions was approximately 18%. In the second model, the youth remained in adult court, had the average juvenile court history index score (1.79), committed a robbery, and used a weapon in the commission of a crime. The probability of incarceration under these conditions increased to 91%. The third model had the same conditions as the second except the

TABLE 3  
Logistic Regression Coefficients Representing Estimating Effects of Extralegal Factors  
on the Likelihood of Determination of Guilt in Juvenile and Adult Court

	<i>Juvenile Court</i>			<i>Adult Court</i>		
	<i>b</i>	<i>SE</i>	<i>Odds Ratio</i>	<i>b</i>	<i>SE</i>	<i>Odds Ratio</i>
Metro East	-1.38**	.517	.251	-2.03***	.348	.131
Metro West	-.400	.604	.670	-.252	.692	.777
Gender	.072	.533	.930	.943*	.412	.390
Race	-.242	.474	.785	-.758	.496	.469
Age	-.028	.199	.973	.071	.101	1.074
Constant	2.693	3.622	14.78	2.75	2.38	15.559
-2 Log Likelihood		183.34			310.504	
Cox & Snell $R^2$		.070			.194	
Nagelkerke $R^2$		.105			.276	
Model $\chi^2$		12.933*			67.540***	
<i>df</i>		5			5	
% Correct		75.7			73.6	
<i>N</i>		177			314	

\* $p < .05$ . \*\* $p < .01$ .

youth had the highest possible juvenile court history index score (five). The probability of incarceration under these conditions increased to 97%.<sup>9</sup>

#### *Within-Group Analysis*

This portion of the analyses examines the effect, if any, of the extralegal factors on determination of guilt within juvenile and adult courts, and the effects of extralegal and legal factors on sentencing in both courts. With respect to determination of guilt only the extralegal factors are included because of the absence of probable cause factors (see Footnote 4). Table 3 reports the logistic regression results for adjudication in juvenile court and indicates that only court of jurisdiction (Metro East) was significant; that is, youths in the Metro East Juvenile Court were less likely to be adjudicated delinquent compared to youths in the remainder of the state.

Table 3 also reports the logistic regression results for conviction in adult court and indicates that gender and court of jurisdiction were significant; that is, youths in the Metro East Adult Court were less likely to be found guilty compared to youths in the remainder of the state. Males were more likely to be found guilty compared to females.

Four prediction models were calculated based on the two significant factors. For males in the Metro East jurisdiction, the probability of being found guilty in adult court was 66%. However, for males in other jurisdictions, the probability of being found guilty increased to 78%. For females in the Metro East jurisdiction, the probability of a finding of guilt was only 17%. This increased substantially for females in other jurisdictions to roughly 59%.

Table 4 reports the logistic regression results of legal and extralegal factors on placement of adjudicated offenders in juvenile court. The model was developed with legal factors entered first and the full model that included legal and extralegal factors. One legal and one extralegal factor (juvenile court history and age) were significant in the model. Youn-

TABLE 4  
 Logistic Regression Coefficients Representing Estimating Effects of Legal and Extralegal  
 Factors on the Likelihood of Placement in Juvenile Court

	$\beta$	SE	Odds Ratio	b	SE	Odds Ratio
Juvenile court history	.415**	.133	1.515	.392**	.144	1.479
Seriousness of offense	.974*	.408	2.648	.452	.504	1.572
Weapon use	2.50*	1.084	12.182	1.966	1.122	7.143
Metro East				.375	.523	1.455
Metro West				-.484	.555	.616
Gender				-.028	.646	1.029
Race				.724	.475	2.062
Age				-.569*	.246	.566
Constant	-3.100**	1.098	.045	6.282	4.365	534.863
-2 Log Likelihood		148.321			134.709	
Cox & Snell $R^2$		.188			.238	
Nagelkerke $R^2$		.251			.319	
Model $\chi^2$		26.405***			33.237***	
df		3			8	
% Correct		66.9			73.8	
N		127			122	

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

ger juveniles and those with more extensive juvenile court histories were significantly more likely to be placed in juvenile correctional facilities.

Two prediction models were developed for juveniles at ages 15 and 17 years with juvenile court history scores of 0, 3, and 5, respectively. For a juvenile age 15 years with no prior juvenile court history, the probability of placement was 9%. However, for a 15-year-old with a juvenile court history of three, the probability of placement increased to 25% and to 43% with a juvenile court history score of 5. For a 17-year-old with the same juvenile court history scores, the probabilities of placement increased from 3%, to 10%, and to 19%, respectively.

Table 5 reports logistic regression results of legal and extralegal factors on the likelihood of incarceration in adult court. It is interesting to note, neither the model nor any of the factors were significant. The likely explanation is that for this group of juveniles, excluded by statute from the juvenile court and convicted in adult court, the likelihood of incarceration is definite. To illustrate this point, a minority youth with the maximum juvenile court history score found guilty of committing a robbery in the Metro East jurisdiction, the likelihood of incarceration was more than 99%. Likewise, for a White youth with no juvenile court history found guilty for the less serious aggravated assault offense in a jurisdiction other than Metro East, the likelihood of incarceration was also more than 99%.

## Conclusions and Implications

Of the 701 exclusions, only 194 (28%) were eventually incarcerated. Of those incarcerated, only 106 (15% of the total sample) were sentenced to state prison. These results indicate that only a fraction of *Act 33* cases received a serious sanction. Perhaps as interesting is that more than one third (36%) of the sample had their cases dismissed at either the pre-

TABLE 5  
 Logistic Regression Coefficients Representing Estimating Effects of Legal and Extralegal Factors on the Likelihood of Incarceration in Adult Court

	$\beta$	SE	Odds Ratio	b	SE	Odds Ratio
Juvenile court history	.261	.148	1.298	.212	.155	1.236
Seriousness of offense	.112	.434	1.119	.060	.472	1.062
Weapon Use	-6.04	19.958	.002	-6.004	19.698	.002
Metro East				-.850	.510	.427
Metro West				-.581	.743	.559
Gender				.124	.745	.883
Race				.886	.523	2.425
Age				-.247	.269	.781
Constant	7.418	19.96	1,665.215	11.448	20.208	93,680.854
-2 Log Likelihood		143.753			131.038	
Cox & Snell $R^2$		.030			.064	
Nagelkerke $R^2$		.055			.119	
Model $\chi^2$		5.875			12.288	
df		3			8	
% Correct		87.2			87.7	
N		196			187	

liminary hearing or at their subsequent trial or juvenile court hearing. Moreover, nearly 30% of the cases were remanded back to juvenile court.

The *Act* was designed to protect society by the removal and incarceration of serious young offenders. However, only 15% of excluded youths were incarcerated in institutions typically reserved for serious adult criminals. This suggests that statutory exclusion is less discriminating in identifying serious young offenders and also less effective in meting out punishment compared to the preexisting process, judicial waiver. A comparison of Pennsylvania's 1986 Judicial Waiver Study (see Lemmon et al., 1991) with the current results indicate that 89% of the waivers were convicted compared to 53% of the *Act* 33 cases. Overall rates of incarceration in adult facilities (jails and state prisons) indicate that 76% of the waivers were incarcerated compared to 28% of the *Act* 33 cases. In terms of state prison incarcerations, 25% of the waivers were committed to state prisons compared to only 15% of the *Act* 33 cases.

The current study also found no significant difference in the certainty of punishment between juvenile and adult courts. Conviction rates in both courts were almost identical, 76% in juvenile court compared to 72% in adult court.<sup>10</sup>

However, with respect to severity of punishment, the adult court was significantly more likely to incarcerate than the juvenile court, 87% compared to 55%.<sup>11</sup> Further analyses indicated that the higher probability of incarceration in adult court was due to them having committed more serious offenses, having used a weapon in the commission of their offenses, and having more extensive juvenile court histories compared to their juvenile court counterparts.

With respect to determination of guilt within the juvenile system, court of jurisdiction was the only predictive factor. Cases handled by the Metro East Juvenile Court were less likely to be adjudicated compared to the rest of the state. The results concerning court of jurisdiction suggest the presence of characteristics unique to specific judicial systems that re-

duce the certainty of punishment in delinquency cases. This question requires more elaboration to determine the nature and extent of the relationship. This could be accounted for by a number of factors including legal representation, judicial decisions, as well as the administrations of cases.

The analysis within the adult court indicated that two extralegal factors, court of jurisdiction and gender, decreased the likelihood of determination of guilt. Again, cases handled in Metro East Court and females were less likely to be convicted.

With respect to severity of punishment within juvenile court all of the legal factors (seriousness of crime, weapon use, and juvenile court history) were significant in predicting placement initially. However, when the legal and extralegal factors were simultaneously entered into the model only age and juvenile court history predicted placement. The juvenile court was more likely to place younger youths and those with more extensive delinquent histories. The results indicate that the juvenile court considers age in placement decisions as a means of offering intensive services to youths that commit serious crimes. In addition, the juvenile court also considers prior delinquent history in holding youth accountable for their crimes.

A different picture emerged in regard to severity of punishment in adult court. Within-court analyses on sentences of incarceration indicated that no factors were significant in predicting incarceration in the adult correctional system. This can be explained by the fact that among youths convicted in the adult court virtually all (87%) were given incarceration sentences.

Statutory exclusion appears to be less effective in deterring crime than judicial transfer. Because transfer hearings in Pennsylvania serve as the preliminary hearing we have no way of knowing how many potential transfers are retained in juvenile court. The implication is that the so-called judicial transfer conviction and incarceration rates are artificially inflated. Still, juvenile court judges and staff are better prepared to handle these cases, and the higher rate of dismissals in the statutory exclusion cases may be a function of the courts of limited jurisdiction inability to properly investigate and adjudicate these cases allowing many guilty offenders to go free.

Consequently, is there really a need for two exclusion mechanisms especially when one seems to be less efficient? If both were convicting and incarcerating at the same rate, it might be arguable to keep both even though it would be a duplication of services. However, if *Act 33* is less effective, from a deterrence perspective, it offers guilty offenders the option of reducing their chances of being brought to justice in the adult system. Clearly from the offender's point of view, it is in their best interest to be processed through statutory exclusion.

These findings support previous conclusions that multiple exclusion mechanisms only confound the exclusion process (Snyder et al., 2000) and produce no substantial deterrent effects on crime (Mears, 2003; Redding, 2003; Singer, 2003). Comparative studies (see Verrecchia, 2003) indicate that statutory exclusion is a less effective than judicial transfer to ensure certainty and severity of punishment. The results support Sanborn's (2003) appeal for a selective exclusion process that properly identifies the serious youth offenders who should receive adult sanctions and efficiently prosecutes them. A system comprising multiple exclusion mechanisms produce too many inconsistencies in the justice process for this to occur.

The most prominent extralegal factor was court of jurisdiction. Metro East Court was less likely to find youths guilty in juvenile and adult court. This suggests that different sets of norms may be operating within the state reflecting the inconsistent meanings and varia-



tions in the use of exclusions from jurisdiction to jurisdiction (Bortner, 1986; Howell, 1996; Mears, 2003).

Interesting as well is that no race effects were observed in any of the logistic models. Race had little to do with the certainty and severity of punishment. For example, 80.7% of the sample of all *Act 33* cases were minorities and 80.4% of those incarcerated in the adult correctional system were minorities. These percentages indicate that the rate remained unchanged throughout the process. Still, the race and/or criminal justice processing nexus leaves a number of questions unanswered. For example, a bivariate relationship was found linking race to judicial decisions to return youths to the juvenile court. Of white youths, 48% were returned compared to only 30% of minorities across the state. However, when the observed relationship was elaborated, specification was found on county of jurisdiction. A relationship did not exist in either the Metro East or the Metro West court systems but increased among the aggregated court systems in the remainder of the state. Race was associated with the seriousness of offense; however, no association was found with other legal factors such as weapon use or juvenile court history. The sample comprised a homogeneous group of youths made up predominantly of inner-city minority males. All were charged with felony-level crimes, and the vast majority was alleged to have used a weapon in the commission of those crimes. Still, when more than four fifths of all cases processed under *Act 33* are minorities it begs the question why such disproportionate numbers of minority children end up so deep into the criminal justice process. The answer may be found by examining the structural issues related to crime rather than the systematic or contextual ones (see Walker et al., 2004) that limit examination to the criminal justice system only.

Considering the implementation of this policy, the findings indicate that statutory exclusion is not as effective as the existing judicial transfer mechanism in achieving a major aim of the deterrence approach, namely certainty of punishment. Moreover, the policy might be unfairly targeting minority youths. In terms of future research, information on other legal variables including type of legal representation, mitigating and aggravating circumstances regarding the offenses, and strength of evidence might explain why judicial culture appears to affect certainty of punishment.

In spite of concerns over the efficacy of the statutory exclusion mechanism, *Act 33* might actually benefit Pennsylvania's serious young offenders in the long run. As mentioned earlier, the *Act* also includes language that has led to the implementation of the restorative justice model across Pennsylvania's juvenile justice system. Restorative justice emphasizes youth accountability and community protection, two elements designed to deter youth crime. The consensus being that a *parens patriae* (or due process) model lacks the balance to provide youth offenders with a sense of accountability to the victims and the community they have harmed (Bazemore & Schiff, 2001; Bazemore & Walgrave, 1999; Zehr, 1990). Under this type of model, there are few incentives for juveniles to take responsibility for their crimes and many incentives to remain passive while the state marshals its case against them (see Van Ness & Heetderks-Strong, 2002). Restorative justice also calls on courts and the communities to address the injuries sustained by its youth offenders. It recognizes the importance of addressing the conditions that contribute to chronic and violent offending as well as the devastating impact of incarceration on the lives of the young (see Mears, 2003; Singer, 2003). Theories ranging from restorative justice (Bazemore & Walgrave, 1999; Van Ness & Heetderks-Strong, 2002; Zehr, 1990) to the ecological model (Garbarino, 1999; Hawkins, Catalano, & Miller, 1992) agree that community safety and order can only be accomplished when there is a commitment to social justice and the active

participation of the community to protect the welfare of its children. Bazemore and Walgrave (1999) went as far as to advocate the creation of a decentralized, community-controlled juvenile justice system. Although this is unlikely to occur in the near future, Pennsylvania's commitment to Communities That Care (Catalano & Hawkins, 1996; Hawkins et al., 1992) and the restorative justice models offers a clear indication that there is a movement toward a balanced community-based treatment system for at-risk youth offenders.

## NOTES

1. Unless otherwise specified, the term *exclusion* will be used as a general term to describe any legal mechanism, (e.g., direct files, blended sentences, judicial transfers, statutory reduction of the age of majority or other forms of statutory exclusion) used to exclude juveniles from the protections and immunities provided by the juvenile court as argued by Sanborn (2003).

2. Pennsylvania's Tier II youths, the repeat violent offenders, are similar to Florida's Three Strike Policy presented by Sanborn (2003) as an example of mandatory discretion.

3. The National Center for Juvenile Justice Report (see Snyder et al., 2000) includes an analysis of the impact of the *Act 33* legislation on statutory exclusion in three of Pennsylvania's 67 counties. Our research team cooperated with Dr. Snyder and his staff by collecting the data from two of those counties. The staff at the National Center for Juvenile Justice collected the data from the third county. The current study offers a complete analysis of the entire Commonwealth.

4. Inconsistencies in results of exclusion studies are illustrated by variations in rates of convictions and incarcerations. Conviction rates have ranged from 25% (Kinder et al., 1995) to 96% (Bishop et al., 1989). Of those convicted, Kinder and colleagues (1995) and Champion (1989) reported incarceration rates of 6% and 11%, respectively. Houghtalin and Mays (1991) and Gragg (1986) reported incarceration rates as high as 64% and 77%, respectively.

5. For a thorough critique of the changing trends in the nature of transfer research occurring during the past quarter century (see Myers, 1999).

6. The Pennsylvania Juvenile Court Judges' Commission comprises nine judges appointed by the governor to oversee the operation of juvenile courts within the state.

7. AOPC has administrative authority for all adult criminal cases and maintains a database of all referrals to criminal court.

8. Unfortunately, the researchers were not able to access data on probable cause.

9. The prediction models for the expected value of  $Y = 1$  (incarceration in either juvenile or criminal court) are as follows: constant,  $a = -1.54$ ; and regression coefficients for group status,  $b_1 = 1.56$ ; juvenile court history index,  $b_2 = .366$ ; seriousness of the offense,  $b_3 = .584$ ; and weapon use,  $b_4 = 1.083$ . The formula with values of group status = 0 (juvenile court) juvenile court history index score = 0; seriousness of offense = 0 (aggravated assault) and weapon use = 0 (no weapon) produced a logit of  $-1.54$  (constant) indicating the likelihood of incarceration at 17.65%. The logit when all values were equal to one, for example, group status (adult court) juvenile court history index score of 5, serious of offense robbery, and weapon used in the offense, produced a logit of 3.517 indicating the likelihood of incarceration at 97.12%.

10. Chi-square results comparing certainty of punishment by court of jurisdiction indicated no significant association as illustrated in Table 6.

11. Chi-square results comparing severity of punishment by court of jurisdiction indicated a significant association as illustrated in Table 7.

TABLE 6  
 Guilt Determination by Court of Jurisdiction

	<i>Juvenile Court</i>		<i>Adult Court</i>	
	%	n	%	n
Dismissed	24	(45)	28	(93)
Guilty	76	(139)	72	(234)
Total	100	(184)	100	(327)

NOTE: phi = .04, sig. = .33.

TABLE 7  
 Type of Sentence by Court Jurisdiction

	<i>Juvenile Court</i>		<i>Adult Court</i>	
	%	n	%	n
Probation	44	(61)	13	(29)
Incarceration	55	(77)	87	(194)
Total	100	(138)	100	(223)

NOTE: phi = .35,  $p < .001$ .

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