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Juvenile Penalties for “Lawyering Up”: The Role of Counsel and Extralegal Case

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Abstract

The presence of counsel for juveniles in the courtroom seems advantageous from a due process perspective, yet some studies suggest that juveniles receive harsher dispositions when represented by an attorney. This study tested whether a “counsel penalty” existed regardless of attorney type and, guided by prior sentencing literature, used a more comprehensive model to determine the influence of extralegal and contextual factors that may amplify the counsel penalty. Utilizing official data from a Northeastern state in a multilevel modeling strategy, this study found that regardless of the type of counsel retained, harsher sentences were received as compared with cases in which a juvenile was not represented by counsel even after controlling for offense type. Moreover, minority youth with public defenders and males with private counsel received harsher sentences while community characteristics did not appear to have a significant influence on sentencing decisions.

Keywords

attorney representation, juvenile detention, sentencing

Historically, juvenile delinquents have neither been afforded the same legal rights as adults during court processing nor did the judiciary deem these rights as a necessary component of the juvenile justice system. Unlike the adult system, the juvenile court was founded on a rehabilitative and therapeutic philosophy in which the overarching goal was to restore youthful offenders into well-adjusted, responsible, and law-abiding citizens (Burruss & Kempf-Leonard, 2002) rather than seek punishment. Consequently, the focus of the court was to act in the best interest of the juvenile rather than the provision of due process. Much was altered with the landmark *In re Gault* decision (1967), which established that “a child has procedural due process rights in delinquency adjudication proceedings where the consequences were that the child could be committed to a state institution” (Guevara, Spohn, & Herz, 2004, p. 344). Among the due process rights granted by the *Gault* decision was the legal right to the presence of counsel, a right which juveniles were not prohibited from waiving.

State reactions to the *Gault* decision varied from mandating legal representation to implementing a complex waiver process, which requires proof that the youth understands the meaning and consequences of waiving their right to counsel. Other states implemented a policy that grants waivers only after the juvenile has an initial consultation with counsel, or when the juvenile requests a waiver in the presence of a parent or legal guardian (National Juvenile Defender Center, 2007). Increases in legal representation of juvenile delinquents during court proceedings have occurred but neither in a systematic manner across states nor uniformly within states (Burruss & Kempf-Leonard, 2002; Champion, 1992; Feld, 1988; U.S. General Accounting Office, 1995). Moreover, the type of counsel retained (public or private) remains variable across jurisdictions (Burruss & Kempf-Leonard, 2002; National Juvenile Defender Center, 2007).

Concerns over how the addition of counsel in the juvenile courtroom would influence case outcomes spurred a series of studies that has demonstrated mixed findings. Some studies suggest that when counsel is retained, the severity of outcomes is lessened, whereas other studies find the opposite to be true, suggesting that other factors may be interacting with the presence of counsel. Studies to date have not used models that fully account for other factors known to typically influence sentencing

decisions. The current study adds to the existing literature by examining the effects of counsel presence (vs. waiver) as well as counsel type (public vs. private) on the severity of sentence outcome, while controlling for a broader range of individual and contextual variables, including an examination of possible interaction effects.

Pros and Cons of Legal Representation

Although some researchers argue that evidence suggests juveniles should not exercise their right to counsel due to possible penalization (Feld, 1988, 1989; Guevara et al., 2004), not everyone agrees. Proponents argue legal representation is necessary given the philosophical shift in the juvenile court toward a more punitive focus. They suggest this shift has occurred due to the public's heightened fear of crime and perceived ineffectiveness of the juvenile justice system (Bazelon, 2000; Feld, 1993a, 1998; Kappeler, Blumberg, & Potter, 2000; Merlo & Benekos, 2000, 2003). Researchers argue that this shift is evidenced by the proliferation of juveniles processed in the adult system (Bishop, 2000; Redding, 2003) and rulings such as the *Apprendi v. New Jersey* decision (530 U.S. 466 [2000]), which allowed the history of delinquent adjudications to be considered when deciding the level of punishment for a defendant in the adult court system. This philosophical change underscores a renewed importance in ensuring that juvenile rights provided by the *Gault* decision are met in practice.

Other proponents have concentrated on pragmatic factors related to the need for legal representation by suggesting that neither juveniles nor their parents are sufficiently informed about criminal justice system processes signifying the need for a trained third party to aid in the defense of the juvenile if unwarranted punishment is to be avoided. Specifically, studies have found that juveniles and sometimes their parents were unfamiliar with legal terminology commonly used in court proceedings, which in turn affected their comprehension of court processes (Grisso & Schwartz, 2000). Also, in some cases, parents encouraged youth to admit guilt rather than placing the burden of proof on the state to prove their case (Feld, 1984; Guggenheim, 1984).

Taking a different viewpoint, opponents of legal representation argue that retaining counsel is not in the best interest of the juvenile because the quality and competency of counsel available for juvenile proceedings is subpar. In investigating

these concerns, the American Bar Association (1995) indeed found juveniles rarely received a rigorous defense, concluding that the conditions of the juvenile court are not conducive to an attorney's success. Jones (2004) delineated a number of specific barriers that may explain these findings, which included excessive caseloads of public defenders, low levels of compensation/ caps on funds available to defend indigent cases, and a lack of training. In addition, juvenile proceedings are relatively expeditious proceedings posing additional constraints on case preparation and leading to an increased risk of inadequate case preparation (see also American Bar Association Juvenile Justice Center & New England Juvenile Justice Defender Center, 2003).

The poor representation by counsel then fails to offset a second concern of opponents, which is that the juvenile court is unaccustomed to the presence of defense counsel and consequently may view retained counsel as interfering with courtroom processes. According to Feld (1999), "Historically juvenile court judges declined to appoint lawyers for indigent juveniles, often attempted to discourage parents from retaining counsel, and hindered and obstructed those lawyers who did appear in their courts" (p. 124). Thus, even if juveniles were represented by skilled, unburdened attorneys, normative courtroom culture would remain as a barrier.

"Counsel Penalty" in Juvenile Dispositions

Recognizing different perspectives on the appropriateness of counsel representation and possible associated barriers, researchers have turned their attention to studying the impact of legal representation on case outcomes. In doing so, researchers have found mixed effects and more recently uncovered a potentially disturbing trend. While early studies found that retention of counsel had negligible effects on case outcomes (Clarke & Koch, 1980; Ferster & Courtless, 1972), recent evidence is mixed. Some studies find representation is beneficial, whereas others suggest that represented youth may be more severely sanctioned, even after controlling for offense type and characteristics of the juvenile (Burruss & Kempf-Leonard, 2002; Feld, 1988). For example, Sanborn (1996) engaged in extensive interviews with court officials, including probation officers, defense attorneys, and prosecutors, in three juvenile courts in urban, suburban, and rural communities and found benefit to

representation. He concluded that judges gave preferential treatment to cases represented by privately retained counsel and explained this result by suggesting that the judges felt “the family had already been penalized sufficiently by having to pay for a lawyer’s services” (p. 105). Although this study relied heavily on court officials’ opinions, the overarching conclusion was that the presence of juvenile counsel resulted in less severe dispositions. A study by Carrington and Moyer (1990) also found benefit to legal representation; however, they attributed lower conviction rates of unrepresented youth to differential rates of guilty pleas such that represented juveniles were more likely to enter not guilty pleas, thereby decreasing the odds of adjudication.

In contrast, Burruss and Kempf-Leonard’s (2002) study determined that youth in suburban and rural courts were almost 3 times as likely to receive out-of-home placements when represented by counsel as compared with unrepresented youth. Results were unclear for the urban court studied because all youth who received out-of-home placement in this urban jurisdiction both had counsel *and* were detained prior to adjudication resulting in an inability to identify causal order of factors affecting disposition decisions. Thus, the complexities of the influence of representation appear to be numerous requiring a more thorough consideration of contextual factors.

Does Type of Counsel Matter?

In considering recent studies, a point of demarcation stems from the *type* of counsel retained by the youth. Similar to adult criminal court, a wide array of defense counsel options are available to juvenile defendants, including privately retained counsel, public defenders, court advocates, and court-appointed counsel. Although Clarke and Koch (1980) found that overall attorney presence did not impact outcomes, variation within cases that retained counsel appeared to exist. Although approximately 50% of cases wherein youth retained private counsel were dismissed, only 30% of cases where the youth was represented by either a public defender or assigned counsel were dismissed. In addition, the commitment levels of youth represented by private attorneys or youth unrepresented were significantly lower, 5.1% and 3.1%, respectively, than youth represented by public defenders or appointed counsel, 18% and 16%, respectively. Unfortunately, multivariate analyses were not used in the Clarke and Koch

study so the influence of other factors on these results remains unknown.

Burruss and Kempf-Leonard (2002) also found differences by type of defense counsel in their study on the likelihood of out-of-home placement decisions. Specifically, they found that

youth with public defenders in the suburban court were more than five times as likely to be placed as those without an attorney, and youth with appointed or retained counsel were more than twice as likely to receive an out of home placement. (p. 57)

Finally, Guevara et al. (2004) found that the presence of private counsel resulted in a harsher disposition than the presence of public defenders. Specifically, “youth with a private attorney were the least likely to have the charges dismissed and the most likely to receive a secure confinement” (p. 357) as compared with youth who were represented by public defenders or were unrepresented.

Interaction of Extralegal Factors and Counsel Presence

Inconsistencies in results to date may also stem from an interaction of the presence and/or type of counsel with individual and case characteristics. An extensive body of research on the effects of extralegal offender characteristics on sentencing decisions in the juvenile justice system has been amassed (Hawkins & Kempf-Leonard, 2005; Kempf-Leonard, 2007; Kempf-Leonard, Pope, & Feyerherm, 1995). Race has consistently been identified as the most robust characteristic related to disparities at various stages of processing with a demonstrated advantage for White, nonminority offenders (Bishop, 2005; Leiber & Fox, 2005; Leiber & Mack, 2003; McCord, Widom, & Crowell, 2001; Secret & Johnson, 1997; Tracy, 2005). Few studies have combined this literature with a consideration toward the effects of attorney representation and case outcomes (Feld, 1989; 1993b; Guevara et al., 2004; Kempf-Leonard et al., 1995; Leiber & Fox, 2005). Guevara et al. (2004) acknowledged this potential relationship and found in their research a significant main effect of attorney presence on outcomes and an interaction between race and legal representation. Specifically, representation by a private attorney or public defender was an aggravating factor for both White and non-White youth who consequently were more likely to receive a secure confinement

disposition; however, this negative impact was more pronounced for minority youth. Given the results of Guevara et al., disentangling the effects of counsel appears when models include measures of counsel retention, the type of counsel retained, and interactions between individual characteristics (i.e., race of juvenile delinquent) and counsel measures. Although Guevara et al. advances this literature significantly, the study was unable to account for contextual factors previously found to be important in disposition decisions.

Following Feld's (1991) "Justice by Geography" argument, researchers have advanced the understanding of racial bias in justice proceedings through the identification of the contextual factors associated with disposition decisions and other stages of court processing (Frazier, Bishop, & Henretta, 1992); however, these prior studies have not accounted for the role of counsel (Armstrong & Rodriguez, 2005; Bridges et al., 1993; Secret & Johnson, 1997). In macro-level analyses, Sampson and Laub (1993) found that the proportion of "underclass" poverty and racial inequality in a county impacts decisions to place juveniles outside their homes at the time of disposition. Leiber and Stairs (1999) found that in a jurisdiction evidencing greater structural and racial inequality, African American youth were more likely to receive the more severe outcome than similarly situated White youth. Similarly, Bridges et al. (1993) found that urbanism, violent crime, and percentage of minority juvenile delinquents in counties directly affected adjudication and disposition decisions. Secret and Johnson (1997) examined the impact of individual and structural (or contextual) components of detention, adjudication, and disposition decisions by aggregating individual characteristics of the juveniles within each jurisdiction. They found, in the state of Nebraska, that county-level characteristics such as crime rate, percentages of the population with high school education, percentage of unemployed, percentage in poverty, percentage of non-White, percentage of urban, and average age of population significantly influenced juvenile court processing decisions.

Bray, Sample, and Kempf-Leonard (2005) found that the odds of out-of-home placement were significantly different depending on court characteristics and demographic factors, distinguishing between urban and rural jurisdictions. Similarly, in examining factors influencing detention decisions, Armstrong and Rodriguez (2005)

showed that although individual characteristics of the juvenile delinquents were important predictors, much of the variation in decisions was explained when contextual factors of the counties were considered. Specifically, areas with a higher percentage of non-White population were found to be more likely to detain juvenile delinquents. Taken together, the studies summarized here demonstrate the importance of considering a broader array of individual and contextual factors of jurisdictions when examining the influence of counsel on adjudication decisions.

Current Study

This study advances the literature on the influence of counsel on disposition decisions in juvenile delinquency cases by including measures of counsel type (private and court appointed) and the interaction of counsel with extra-legal and contextual factors in a multilevel model, and by utilizing data from multiple counties in a Northeastern state. Specifically, we include extralegal factors of race and income level of the juvenile's family as well as a variety of contextual factors of the county in which the case is located.

This study begins with separate tests of the main effects of attorney presence, then attorney type, on severity of disposition decisions, controlling for legal, extralegal, and contextual factors. Second, the interactive effects of counsel type with legal, extralegal, and contextual factors as they impact juvenile disposition decisions are examined. Specifically, the following research questions are addressed:

Research Question 1: Does the presence of counsel result in a more severe disposition as compared with cases in which counsel is not retained when controlling for legal, extralegal, and contextual factors? If so, does the type of counsel retained matter?

Research Question 2: Does the type of counsel interact with the legal, extralegal, and contextual factors of the case to differentially affect the likelihood of a more severe disposition decision?

Method

Participants

Data for this study consisted of 5,846 cases of adjudicated juvenile delinquents from the 61 counties in a Northeastern state. The data included referrals for new delinquent acts and excluded status offenses and probation violations. The unit of analysis was the case in this study, so it is possible the same juvenile delinquent accounted for multiple cases.

Measurement

Placement decision is the dependent variable in this study as it is the most severe disposition possible. Placement options included secure facilities, residential treatment programs, group homes, or other types of residential programs. These out-of-home placements (coded as “1”) were contrasted with disposition decisions resulting in case dismissals/warnings, informal adjustments, fines, consent decrees, or probation. These options were categorized as “nonplacement” (coded as “0”). The independent variables included the presence of counsel (presence coded as “1” and waiver coded as “0”), the type of counsel, and other legal, extralegal, and contextual characteristics associated with the case. Type of counsel is categorized by private attorneys, public defenders, or waiver of counsel.

Legal characteristics.

Offense type reflects the most serious crime for which the juvenile was charged (if multiple charges existed). To reflect prior studies in this area, *offense type* is grouped according to violent, property, or drug offense.¹ Violent offenses include assault, aggravated assault, robbery, murder, and rape. Property offenses include theft, miscellaneous offenses,² burglary, and arson. The criminal history of the juvenile delinquent associated with the case is measured by the juvenile’s *number of prior referrals*.³ *Detention* (1 = yes and 0 = no) is measured using official records to determine preadjudication detention in a secure facility.⁴

Extralegal case characteristics.

Racial and ethnic categories available in the data were White, African American, and Hispanic, wherein juveniles of Hispanic heritage were considered as distinct from

juveniles who were categorized as White or African American. Dummy variables were created to contrast African Americans and Hispanics to White juveniles. Gender was coded with males as “1” and females as “0.” *Family income* is measured using the juvenile’s self-report during the intake stage.⁵ Family income levels were structured in a 4-point, ordinal-level scale ranging from earning less than US\$8,000 to earning more than US\$24,001. The variable *living situation* contrasts juveniles who live in two-parent households (including step- parents), with single-parent households, group homes, foster homes, or other living situations. It is assumed that living situations other than two-parent households may be viewed as a risk factor, thereby increasing a juvenile’s likelihood of placement.

Contextual characteristics of the case include variables that measure community factors that may contribute to the likelihood of a more severe disposition decision. Prior research has suggested that youth in urban areas may be more likely to receive out-of-home placements due to increased availability of resources and/or residential facilities. Further distinct judicial philosophies may exist in urban areas as compared with rural areas (see Feld, 1991, for further discussion). Here, the factors considered are expanded beyond urbanization to also include crime rate, income inequalities by race, and percentage of non-White measured at the county level in which the case was processed.

Urbanization is defined as the percentage of the county comprised of an urban area. These data were extracted from the 1990 U.S. Census Bureau data, which classified an urban area as one that comprises all territory, population, and housing units in urbanized areas and in places of 2,500 or more persons outside urbanized areas. *Crime rate* is measured by the total number of arrests per 100,000 persons as demonstrated in the 1990 Uniform Crime Report. *Income inequality* is measured by the difference in the average income of White versus non-White residents in the county. A positive number indicates the average dollar amount a White resident earns as compared with the average dollar amount a non-White resident earns, thus a higher number represents greater income inequality. *Percentage of non-White* indicates the racial composition of the county.⁶ *Percentage of female-headed households in poverty* indicates the percentage of residences defined as in poverty status that are female-

headed households with children, no husband present.

Analytical Strategy

A two-level hierarchical generalized linear modeling (HGLM) strategy was used for the analysis. The data were structured with individual cases nested within each county. The HGLM model is similar to a logistic regression model in that it produces the log odds of occurrence (placement decision) versus nonoccurrence. To facilitate interpretation of the results, log odds were converted into odds ratios for variables demonstrating statistical significance at the .05 level. The first model is a random coefficient model, which includes the Level 1 (individual level) predictors with the Level 2 (county level) equation comprised of the intercept and error term only. Model 1 examines the effect of attorney presence versus waiver controlling for other individual-level and county-level covariates on the likelihood of placement. Model 2 includes an examination of attorney type using the categories of waiver, private attorney, and public defender, controlling for individual- and county-level covariates. The final model utilizes ordinary least squares regression with reduced variables to test for interaction effects between type of attorney and covariates as they impact the likelihood of juvenile delinquent placement.

Results

As indicated in Table 1, in approximately 20% of the cases, juvenile delinquents received an out-of-home placement disposition. In 71% of the cases, the juvenile was represented by counsel. Of those juveniles who retained counsel, 58% of cases were represented by public defenders or court-appointed attorneys. The typical juvenile delinquent associated with these cases was a 15-year-old White male, charged with a property crime as his first offense. Regarding the legal characteristics of these cases, in 67% of the cases, juvenile delinquents were charged with a property crime. The current charge was the first referral for that juvenile in 82% of the cases. In 18% of the cases, the juvenile delinquent was detained prior to the adjudication hearing.

Table 1. Descriptive Statistics

Out-of-home placement (%)	19.9		
Type of counsel (%)			
Public defender/court appointed	57.7		
Private attorney	12.5		
Waiver (no attorney)	29.8		
Legal variables			
Detention (%)	18.2		
Current offense (%)			
Property	67.4		
Violent	25.5		
Drug	7.2		
Number of prior referrals (%)			
0	82.3		
1	14.5		
2	2.4		
3 or more	0.7		
Extralegal variables			
Age, <i>M (SD)</i>	15.14 (1.7)		
Gender (% male)	87.9		
Race (%)			
White	72.0		
Black	20.7		
Hispanic	7.0		
Family income (%)			
Less than US\$8000	21.0		
US\$8000-US\$16000	24.7		
US\$16001-US\$24000	16.0		
US\$24001 or more	24.3		
Living situation (%)			
2 parent household		41.9	
Other/single parent		57.0	
	<i>M (SD)</i>	Minimum	Maximum
Urbanization	38.1 (26.5)	0	98.04
Crime rate	842.7 (515)	213	3,769
Income inequality	4,712 (3,436)	□6,207	1,1297
Percentage of non-White	3.2 (3.3)	0.34	17.49
Percentage of female-headed households in poverty status	43.9 (10.8)	15.5	66.0

Data on the extralegal characteristics of the case demonstrated that in 57% of the cases, the juvenile delinquent resided in a living situation other than a two-parent household. The family income levels were very diverse with nearly equal percentages of cases categorized in each economic background bracket. In at least 75.7% of the cases, the juvenile delinquents resided in households with income below this median level of income.

According to U.S. Census data, the typical county in these cases was a relatively homogeneous county of predominantly White residents that was 38% urbanized with an average crime rate of 843 arrests per 100,000 people. The average income inequality measure indicated that on average White residents earned US\$4,712 more than non-White residents though significant variation existed between counties. Of those households defined as living in poverty, an average of 44% were female-headed households with no husband, but children present. In approximately 20% of the cases, the county was primarily rural.

Impact of Counsel on Placement

Results from Model 1 indicated that after controlling for legal and extralegal factors, the detrimental effect of counsel was evident. Important legal factors that increased the likelihood of a placement decision included detention for the offense and having a greater number of prior referrals. Extralegal factors that significantly impacted placement were gender and family income such that boys and juveniles from poorer families were more likely than girls and juveniles from wealthier families to receive out-of-home placements. Importantly, in contrast to previous studies, race did not exhibit a statistically significant effect. Furthermore, analysis indicated that none of the county-level variables included in the model significantly impacted the likelihood of juvenile placement. In summary, results demonstrated that counsel representation penalized the juvenile by significantly increasing their likelihood of placement, even when controlling for other contextual, legal, and extralegal factors. The finding that a “counsel penalty” occurred during placement suggests a need to consider other factors that may impact and/or interact with counsel presence.

The second model allows for the determination of conditions under which the

counsel penalty occurs. Here we examine whether the *type* of counsel retained (private attorney vs. public defender) differentially impacted the placement outcome. As shown in the final column of Table 2, although both groups that retained an attorney were significantly more likely to receive placement as compared with juveniles who waived the right to an attorney, juveniles who retained a public defender had a slightly greater likelihood of placement over juveniles represented by private attorneys. The inclusion of county-level contextual factors did not change these findings and were excluded from the final models. The significance of individual-level covariates varied slightly such that offender race (Black vs. White) reached statistical significance. Overall, juvenile delinquents who were Black were more likely to receive placement as compared with juvenile delinquents who were White.

Interaction Effects of Counsel and Extralegal Variables

The final step in the analysis was to examine the interactive effects of counsel with extralegal variables. As noted by Guevara et al. (2004), there are two common methods of examining interactive effects. The first method is to create multiplicative terms between the two variables hypothesized to interact and include this interaction term in the model along with other control variables. The second method is to examine the data in separate models for each of the attributes of the variable of interest and subsequently compare the coefficients across these models. Paralleling Guevara et al., this study examines interactions using the second strategy.

Results for the models testing the interaction of counsel type with both legal and extralegal factors are displayed in Table 3. Consistency in the impact of legal variables on placement decisions is evident across all three categories of counsel, regardless of counsel presence or type. With only minor fluctuations in robustness, it is clear that placement decisions are largely impacted by detention of the juveniles prior to adjudication. Juveniles who are detained are significantly more likely to receive an out-of-home placement. The second most robust factor is the number of prior referrals held by the juvenile such that the greater the number of prior referrals, the more likely placement will result. In examining the effects of extralegal factors across the three models, consistency is evident regarding the family income level. Aside from whether

counsel is retained, and regardless of type of counsel, juvenile delinquents from more affluent families are significantly less likely to receive out-of-home placement.

Table 2. Contextual, Individual, and Extralegal Variable Effects on Placement Decisions

	Model 1		Model 2	
	<i>B</i>	Odds ratio	<i>B</i>	Odds ratio
Intercept	□1.66*	0.19	□1.60*	0.20
*				
Contextual variables				
Urbanization	□0.004		□.004	
Crime rate	0.000		0.000	
Income inequality				
Percentage of non-White	□0.000		□0.000	
Percentage of female-headed in poverty	□0.02		□0.02	
	□0.01		□0.01	
Individual variables				
Counsel present	2.13*	8.4	—	—
Private attorney	—	—	1.15*	3.2
Public defender	—	—	1.29*	3.6
Legal variables				
Detention	1.93*	6.9	2.03*	7.6
Prior referrals	0.64*	1.9	0.65*	1.9
Offense type				
Violent	□0.15		□0.17	
Drug	□0.26		□0.29	
Extralegal variables				
Age	□0.02		□0.01	
Gender	0.30*	1.4	0.34*	1.4
Race				
Black	0.21		0.23*	1.26
Hispanic	0.11		0.12	
Family income	□0.21*	0.81	□0.22*	0.08
Living situation	0.08		0.08	
□ ² (<i>df</i>)	324.4 (55)		244.7 (55)	

Note: Contrast groups: counsel—waiver; offense—property; gender—female; race—White; living situation—2 parents.

*Coefficients are significant at $p \leq .05$ level.

Table 3. Interactive Effects of Counsel Type and Legal/Extralegal Factors on Placement Decisions

	Waiver (<i>n</i> = 1,452)		Private attorney (<i>n</i> = 728)		Public defender (<i>n</i> = 3,374)	
	<i>B</i>	Exp(<i>B</i>)	<i>B</i>	Exp(<i>B</i>)	<i>B</i>	Exp(<i>B</i>)
Individual variables						
Legal variables						
Detention	2.34*	10.4	1.98*	7.21	1.91*	6.75
Prior referrals	0.61*	1.84	0.64*	1.90	0.62*	1.86
Offense						
Violent	0.65		0.18		0.16	
Drug	0.70		0.41		0.18	
Extralegal variables						
Age	0.01		0.06		0.03	
Gender	0.80		1.51*	4.51	0.13	
Race						
Black	0.04		0.12		0.27*	1.30
Hispanic	0.14		0.12		0.13	
Family income level	0.38*	0.69	0.40*	0.67	0.18*	0.84
Living situation	0.44		0.23		0.09	

Contrast groups: offense—property; gender—female; race—White; living situation—2 parents.

*Coefficients are significant at $p \leq .05$ level.

Interestingly, results demonstrated interactions between counsel and two extralegal factors, gender and race. Although no extralegal factors were statistically significant in their effect on placement decisions when juveniles waived their rights to an attorney, males who retained a private attorney were significantly more likely to receive an out-of-home placement. Furthermore, juveniles who were Black and represented by a public defender were more likely to receive an out-of-home placement as compared with White offenders.

Discussion

The *Gault* decision assumes that legal representation of a juvenile delinquent will have a positive impact during court proceedings benefiting the youth through added

protections of due process. Previous studies have not supported this assumption in a consistent manner. Controlling for a variety of contextual, legal, and extralegal factors, this study found that juveniles represented by counsel were more likely to receive an out-of-home placement disposition than juveniles who waived their right to counsel. Furthermore, both legal and extralegal factors influenced case disposition decisions. Legal variables, such as the number of prior offenses and detention status, significantly impacted placement decisions most robustly. Family income level also significantly impacted the likelihood of placement, regardless of counsel presence or type (public defender or private attorney). In examining the influence of attorney type, results demonstrated juveniles who were Black and represented by public defenders were more likely to be placed outside the home than their White counterparts after controlling for other legal and extralegal factors. Also, males who retained private attorneys were more likely to be placed outside the home as compared with females. Interestingly, community characteristics as measured here did not significantly influence placement decisions.

The apparent penalization of a juvenile as the result of counsel presence and unequal likelihood of placement between race and gender is arguably disconcerting; however, interpreting these results from the juvenile court's *parens patriae* perspective may not perceive these findings as adverse. This position would argue that in pursuit of protecting the best interests of juveniles, regardless of counsel presence, the court is in essence attempting to identify juveniles with the greatest needs. Once these juveniles are identified, it follows that they should have the greatest likelihood of intervention. Thus, if those juveniles who are economically disadvantaged, male juveniles with private attorneys, and/or juveniles who are Black with public defenders have the greatest needs then it is not unethical or inappropriate that they receive disproportionate levels of intervention.

Another interpretation of these findings argues that removing a juvenile from his or her community and placing them in an institutionalized setting is detrimental to their rehabilitation, and any inconsistencies in this decision is consequently problematic. In one of the most extensive meta-analyses completed on juvenile treatment, Lipsey (1992) examined the treatment aspects of various types of programs (i.e., dosage,

treatment modality, etc.) as well as the methodological aspects of 443 studies on this topic (i.e., sample size, attrition, outcome measures, etc.). Overall, Lipsey found support for juvenile rehabilitation programs such that juveniles who received some form of treatment fared better than juveniles in control groups with respect to future recidivism rates. More directly related to our focus here, his results demonstrated that treatment in custodial institutions was less effective than treatment in alternative settings. Lipsey cautioned that the higher dosage of treatment, and larger amounts of meaningful contact typically provided within community settings, or conversely the lack of treatment that occurs in practice within institutionalized settings, may be at the root of this difference. Thus, if placement is viewed as negative, the results of this study are concerning and the effect of retaining counsel is viewed as an adverse effect.

An explanation grounded in an organizational theory approach aids in understanding the processes by which these disproportionate placement decisions found in this study may occur. Duffee and Siegel (1971) had previously discussed representation issues asserting that “when the appearance of due process has been maintained, the juvenile court should feel secure about future challenges and safer in prescribing even stricter control over its wards” (p. 548). Thus, under waiver circumstances, judges may be less certain that due process has been fully realized and disinclined to sentence a juvenile harshly (i.e., out-of-home placement). It follows that when a juvenile delinquent is represented by counsel, judges may revert to normative sentencing behavior. In these instances, as Gainey, Steen, and Engel (2005) noted, “Decision makers look for indicators of blameworthiness, threat, and danger (including status characteristics) and use these to gauge the appropriate court response” (p. 513). As we noted earlier, prior studies have found that differences in case outcomes can be attributed in part to negative stereotypes of minorities as dangerous, delinquent, threatening, and unsuitable for rehabilitation (Leiber & Fox, 2005; Leiber & Mack, 2003; Leiber & Stairs, 1999; McCord et al., 2001; Sampson & Laub, 1993). These biases are expressed in this data such that males with private attorneys and juveniles who are Black with public defenders may be viewed as particularly egregious with respect to these stereotypes.

It also appears that some of these same stereotypes plague those juveniles who

are poor aside from race and gender. Regardless of representation status, juveniles who are economically disadvantaged are more likely to be placed outside the home. Although prior studies have not directly examined the role of income, various researchers have alluded to the assumption that poor families may not be able to afford a “good” attorney and consequently suffer a more severe sentence. Admittedly, although our measure of family economic level is not without its limitations given its reliance on the juvenile’s knowledge, the ability to “buy” a good defense may not be the only issue regarding attorney status. Here, we find the effect of family economic status transcends the effect of type of counsel retained such that instances in which a private attorney is retained by an economically disadvantaged client, an adverse effect remains. Thus, although race and gender are important individual characteristics that must be considered in this line of research, future research must also seek out improved measures of economic status of the juvenile’s family. Although not examined in our study, we would anticipate that the adverse effects of counsel for economically disadvantaged youth would be further compounded for juveniles who are male and/or Black.

The role of family economic status and counsel is not as straightforward as it may seem, and thus, we caution researchers accordingly. In addition to those juveniles who are impoverished to the extent that they are eligible for public defender services, a segment of the population included in this study are also “middle class” and may neither be eligible for public defender services nor be able to afford (or be willing) to pay for private counsel. Furthermore, although a parent or guardian may economically be able, they may, by way of principle, refuse to pay for legal representation. For juveniles who fall in this category, counsel waiver may be a default representation decision. This is also an idiosyncrasy that requires further study.

This study is not without its limitations. The first limitation is an arguably consistent limitation within the sentencing literature—measurement error as a result of limited case characteristics in the data. More specifically, measurement of case characteristics that includes factors such as the strength of the evidence against the juvenile, demeanor, and contrition are all unavailable in these data and have typically not been adequately considered in current research. Certainly, we would encourage a replication of our

efforts with more refined measures. Second, the category of public defender may be somewhat diluted due to the nature of the public defender's office. If any private attorneys were under contract with the state on an ad hoc or grant basis, they may have been documented as a public defender and not private counsel. Whether this is an appropriate categorization is debatable. Each of these issues point to the complexities associated with the legal representation variable.

Immediate policy implications stemming from these results include a need for an examination of counsel waiver policy and practice across jurisdictions. Variations in policy and practice may also result in inconsistent waiver decisions and the lack of a knowledge base on which a parent or guardian can rely in making informed decisions and on which judges can interpret rationales for waiver decisions as needed. A broad-based policy on counsel waiver that includes a mandatory advisement meeting with counsel would create more reasonable conditions within which an effective decision-making process regarding legal representation could occur.

Second, for defense counsel to become a beneficial attribute in the juvenile system, the courts need to create an appropriate and consistent legal niche for counsel to adopt and uphold. By defining the role of defense counsel in juvenile court, and creating consistent normative representation across all juvenile delinquents, the *Gault* decision may finally have the opportunity to adequately provide positive legal protections for all offenders in the United States juvenile justice system.

Finally, we must work with all officers of the court, including judges, prosecutors, and defense counsel, in striving for equal justice by monitoring court decisions, discretion, and the quality of juvenile defenses. Researchers have previously underscored the need for monitoring judicial and prosecutorial discretion; equally important is the need to monitor the performance of the public defender's office, which may demonstrate variation in voracity and willingness to make concessions during a client's defense in a manner that is systematically biased. Differential decision-making processes and/or behaviors on the part of the public defender may be equally important in creating a disproportionately adverse effect of placement decisions. Clearly, this is a direction for future researchers.

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Notes

1. Additional data relating the seriousness of the offense (i.e., felony/misdemeanor, class) was not available.
2. The majority of the miscellaneous offenses consisted of driving under the influence, trespassing, criminal mischief, and loitering charges.
3. This variable is limited in that the data included only the 3 years before the current referral; however, given that the average age of the juvenile was 15 years, it is a relatively strong proxy that captures the majority of the juvenile's criminal history.
4. Detention was significantly correlated with the presence of counsel ($r = .29$); however, multicollinearity was not evident.
5. We recognize this variable may have questionable validity. Arguably, a juvenile's level of specific knowledge regarding their family's income level could be questioned. Although we decided to include this measure because it was the only economic indicator available, we caution the reader against its potential limitations.
6. County-level measures are most appropriate for measuring contextual factors as the juvenile court system in this state is organized at the county level.

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