

The Consequences of Counting Juvenile Adjudications in Adult Sentencing

I. Introduction

The two primary legal factors that affect most sentencing decisions in guidelines states are the seriousness of the current conviction offense and the defendant's prior record. The seriousness of the current offense speaks to the need for a punishment that is proportional to the harm done by the instantaneous offense. Prior record is typically expressed as a composite score of prior convictions and adjudications and is used by the court to assess the individual's risk to the community (e.g., will the individual offend again?) and culpability for the behavior committed (e.g., should the individual have known better?). Neither, however, is a straightforward count of observable fact. Both are artifacts of policy makers' choices regarding what offenses are more serious and what level of prior court involvement indicates an offender's culpability for the crime and risk to society. Ultimately, policies that are enacted reflect these competing concerns and the wishes of multiple stakeholders.¹ Moreover, past assessments of the seriousness of offense influence the counting and computation of the prior record score (PRS), making the two inescapably interrelated. In this study, we consider one element of prior record—juvenile adjudications—as a case study and examine its role in impacting guideline placement and, consequently, recommended sentencing outcomes.

II. Considering Juvenile Adjudications in Sentencing Guidelines

Whether—and how—to account for juvenile adjudications in sentencing guidelines is a complicated issue. On one hand, frequent and early offending is associated with a longer, more serious, criminal career.² At the same time, however, the juvenile adjudication process differs from adult criminal conviction in key ways.³ First, the juvenile court was established as a separate entity from the adult court with the express purpose of rehabilitating, rather than punishing, youth.⁴ Second, adjudications do not afford the same due process rights as convictions.⁵ Juveniles are often pressured more intensely to plead guilty to the original charges⁶ and to do so without the representation of an attorney⁷ and even at the urging of their parents.⁸ In Pennsylvania, the enabling legislation did not mention adjudications⁹ and the original Commission on Sentencing (“Commission”) initially hesitated to include juvenile adjudications in the calculation of prior record. However,

after criticism received during the 1980 summer meeting of the Trial Judges Association, the Commission ultimately decided to include juvenile adjudication on the grounds that judges considered them to be “an important culpability indicator.”¹⁰

Pennsylvania is not alone in counting juvenile adjudications in adult prior history scores, nor is it alone in facing the questions of how, how much, and when they should be considered. The Federal Sentencing Guidelines and all but one state¹¹ with sentencing guidelines include juvenile adjudications in some form in the determination of sentencing recommendations. However, they vary substantially on which juvenile adjudications affect PRS, how adjudications are weighted, and for how long a juvenile adjudication can be counted in an adult PRS. We offer an overview here, but more comprehensive reviews are available elsewhere.¹²

Several jurisdictions limit which prior adjudications are included in the calculation of adult PRS, such as including only adjudications for felony offenses.¹³ While five of these states count all felony offenses, three further specify the inclusion of only certain more serious or violent subsets of felony offenses.¹⁴ For example, Massachusetts counts only adjudications for offenses that would have fallen into the top three seriousness levels on their sentencing matrix—all of which require incarceration. Pennsylvania counts all adjudicated felonies but only some serious misdemeanors.¹⁵ Many other jurisdictions, however, include *all* juvenile adjudications,¹⁶ or all with the exception of some traffic offenses.¹⁷

Many jurisdictions have also enacted policies that differentially weight juvenile adjudications and adult convictions in the calculation of PRS. These policies include more traditional “weights,” such as the discounting of points in comparison to adult convictions for the same offense,¹⁸ as well as the implementation of point caps.¹⁹ For example, Utah's calculation of prior record assesses juvenile adjudications for only half the number of points that would have been attributed if the offense were an adult conviction. By contrast, point caps limit the extent to which juvenile adjudications alone can place a defendant into a higher prior record category. In Minnesota, the total number of points that can come from a juvenile record is one out of seven possible points, while Utah caps the total number of points that can come from a juvenile record at four out of a possible five categories.



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Finally, the counting of felony and misdemeanor adjudications is also tied in some states to time since the offense, age at the offense, and the period during which one remains crime free. These approaches, often called “lapsing” or “decay” policies, vary in the requirements for juvenile adjudications to be excluded from the calculation of PRS. The least restrictive forms of lapsing/decay policies use an age-at-offense criterion. For example, Minnesota and Maryland both set age cutoffs in which juvenile adjudications will no longer be counted after the offender reaches a certain age (twenty-five and twenty-three, respectively) as determined at the time of the current offense. Kansas, however, distinguishes between felony and misdemeanor adjudications; while juvenile adjudications for misdemeanors no longer affect PRS after age twenty-five, juvenile felonies remain included.

Lapsing/decay policies may also require a certain amount of time to have passed since the juvenile adjudication (i.e., gap periods). Gap period policies exclude offenses that were adjudicated longer than a stated number of years ago. More restrictive lapsing/decay policies require not only a certain amount of time to have passed but stipulate that the individual must also be crime free for a number of years between arrests or convictions. For example, Pennsylvania requires that individuals remain crime free for the ten-year period between ages eighteen and twenty-eight—longer than any other state—and bases the period on the age of legal adulthood rather than on the date of the last conviction.

III. Present Study

The variety of policies related to the inclusion of juvenile records speaks to the multiple, and sometimes conflicting, concerns at play in these decisions. However, there is little empirical work on the consequences of these policies *after* they have been enacted. In this study, we specifically focus on guideline policies in the Commonwealth of Pennsylvania to answer the following questions:

1. How frequently do juvenile adjudications occur?
2. What are the consequences of juvenile adjudications on prior record score? On recommended sentences? Are the costs disproportionate for particular groups of defendants?
3. What is the impact of different counting rules for juvenile adjudications on prior record and on recommended sentences?

To answer these questions, we used annual sentencing files provided by the Pennsylvania Commission on Sentencing that include all criminal court convictions reported to the Pennsylvania Commission on Sentencing²⁰ during 2015–19. Because some offenders are sentenced for multiple offenses in a single judicial proceeding, we conducted all analyses at the proceeding (case) level, with a sample of 408,636 cases for analysis. All results are thus discussed in terms of individual defendants. Reported convictions and

adjudications for each defendant are used both to identify individuals with juvenile records and to produce simulated sentences under alternative scoring approaches.²¹

IV. Juvenile Adjudications and Prior Record Score—Current Practice in Pennsylvania

Currently, sentencing in Pennsylvania is structured according to the 7th Edition, Amendment 6 Sentencing Guidelines (effective January 1, 2021). Under these guidelines, prior juvenile adjudications that occur on or after the offender’s fourteenth birthday (§ 303.6(a)(1)), and where the adjudication of delinquency orders *expressly* find that the juvenile had committed a felony or one of the misdemeanors listed in § 303.7(a)(4), are included in the PRS calculation (§ 303.6(a)(2)). Only the most serious juvenile adjudication of each prior disposition is counted (§ 303.6(b)). Prior juvenile adjudications receive the same prior record points as adult convictions (§ 303.7) and there is no cap on the number of PRS points one can obtain from juvenile adjudications. Most juvenile adjudications can *lapse* if the offender is twenty-eight years of age or older at the time that the current offense was committed (§ 303.6(c)(1)(i)) and the offender remained crime-free²² for a ten-year period preceding the offender’s twenty-eighth birthday (§ 303.6(c)(1)(ii)). Prior juvenile adjudications for four-point offenses are *always* included in the PRS.²³ The court retains the discretion to consider any lapsed prior adjudications at the time of sentencing.

V. How Common Are Juvenile Records?

Juvenile records are relatively rare among sentences reported to the Commission (see Figure 1). Only 24,302 defendants had reported juvenile adjudications, approximately 6% of the total sample. However, juvenile records were much more common among Black defendants (10.4%) than among White defendants (4.3%) and for males (7.3%) than for females (1.6%).

The remaining analysis focuses on the 24,302 defendants who are identified as having at least one juvenile adjudication affecting their PRS (category).²⁴ Most defendants who possess juvenile records are convicted of relatively minor crimes—more than half are sentenced for offenses with an offense gravity score (OGS) of 3 or less.²⁵ Almost 75% of individuals with juvenile records have OGS scores of 5 or less, similar to the general distribution of sentences.²⁶

VI. What Do Juvenile Records Look Like?

The vast majority (78.6%) of defendants with juvenile records have a single juvenile adjudication. Very few defendants have more than two (4.5%). Further, these adjudications are generally for less serious offenses. The most common offenses associated with juvenile records are unspecified felony 2 and felony 3 offenses. These unspecified offenses are not associated with drugs or violence, as the Commission collects information on those types of offenses separately. Figure 2 reports the number of prior

Figure 1.
Frequency of Juvenile Records, 2015–2019

		Total Sample	Juvenile Record				
			Number	0%	5%	10%	15%
		408,636	24,302		5.9%		
Race	Black	108,128	11,274		10.4%		
	White	290,217	12,492		4.3%		
Gender	Male	312,223	22,790		7.3%		
	Female	96,413	1,512		1.6%		

Figure 2.
Number of Prior Record Points Resulting from Juvenile Adjudications

		PRS Points from Juvenile Record					Total
		1	2	3	4	≥ 5	
Total	N	7,855	7,712	3,625	3,341	1,769	24,302
	%	32.3%	31.7%	14.9%	13.7%	7.3%	100%
Black		3,514	3,640	1,429	1,778	913	11,274
		31.2%	32.3%	12.7%	15.8%	8.1%	100%
White		4,179	3,872	2,116	1,503	822	12,492
		33.5%	31.0%	16.9%	12.0%	6.6%	100%
Male		7,298	7,182	3,410	3,174	1,726	22,790
		32.0%	31.5%	15.0%	13.9%	7.6%	100%
Female		557	530	215	167	43	1,512
		36.8%	35.1%	14.2%	11.0%	2.8%	100%

record points attributed to juvenile adjudications. Most commonly, juvenile adjudications increase individual prior records by one additional point. Men and Black defendants are most likely to have four or more juvenile prior record points. Note that the number of defendants with four points from juvenile adjudications does not necessarily mean that those offenders had a four-point offense (i.e., crime of serious violence, such as homicide, voluntary manslaughter, sexual assault, or aggravated assault with serious bodily injury). Four-point offenses are rare; only 11.2% of offenders with juvenile adjudications have any four-point adjudication offenses ($n = 2,712$) and less than 0.5% have more than one ($n = 106$). However, men (11.4%) and Black defendants (13.9%) with juvenile records are more likely to have four-point offenses than women (8.4%) and White defendants (8.8%).

VII. What Are the Consequences of Juvenile Records in Pennsylvania?

Depending on the location of defendants on the Basic Sentencing Matrix,²⁷ juvenile adjudications can have substantial effects on recommended sentences. For example, more than 20% of all offenders with juvenile records are sentenced for OGS 3. The recommended sentence at this

particular OGS level varies greatly depending on PRS, ranging from restorative sanctions in the community, to possible one- to two-year probation, all the way up to county or state incarceration for the higher PRS categories, as shown in Figure 3.²⁸

Moreover, counting juvenile adjudications in the PRS can further affect the recommended sentence length *within* a presumptive sentence type. For example, 12.8% of defendants are convicted of OGS 5 offenses. Defendants with an OGS of 5 and a PRS of 1 receive a standard range recommendation of one to twelve months of county incarceration. The relative cost of each additional point is exponential: individuals with PRS 2 have a recommended minimum sentence of three months, or 3× the minimum of PRS 1, which increases to 6× for those with PRS 3, up to 24× for those in the RFEL category (see Figure 4). Even shifting one PRS category to the right can have substantial implications, especially for defendants convicted of more serious offenses.

To better understand the “cost” of juvenile records, we calculated the total proportion of recommended incarceration months for the most serious offense in each judicial proceeding that could be attributed to juvenile adjudications alone. To do so, we created an alternative calculation

Figure 3.
Basic Sentencing Matrix, OGS 3 (7th Edition, 6th Amendment)

		Prior Record Score							RFEL	REVOC	AGG/MIT
		0	1	2	3	4	5				
OGS 3 (M1)	Simple Assault-Attempt/Cause BI										
	Theft (>\$200-\$2,000)	RS-1	RS-6	RS-9	RS ≤ 12	3-14	6-16	12-18	N/A	+/- 3	
	Carrying Explosives	P1	P1	P2	P2	BC	BC	BC			
	Simple Possession	(50-75)	(150-175)	(225-250)	(300-325)						

Figure 4.
Basic Sentencing Matrix, OGS 5 (7th Edition, 6th Amendment)

		Prior Record Score							RFEL	REVOC	AGG/MIT
		0	1	2	3	4	5				
OGS 5 (F3)	Burglary F2										
	Theft (>\$2,000-\$25,000)	RS-9	1-12	3-14	6-16	9-16	12-18	24-36	N/A	+/- 3	
	DUI M1	P2	BC	BC	BC	BC	BC	BC			
	PWID Marij (1 <-10 lbs)	(225-250)									

Figure 5.
Recommended Annual, Minimum Months of Incarceration Attributable to Juvenile Records

	Recommended Incarceration Months	-	Recommended Months <i>without</i> Juvenile Adjudications	=	Recommended Incarceration Months Attributable to Adjudications	Proportion Attributable to Adjudications
Total	58,806	-	38,838	=	19,969	34.0%
White	20,324	-	12,532	=	7,792	38.3%
Black	36,759	-	25,114	=	11,645	31.7%
Male	57,385	-	38,036	=	19,349	33.7%
Female	1,421	-	802	=	620	43.6%

Note: Figures represent approximate annual **recommended** incarceration months. For recommended months, total sample calculations were divided by 5.

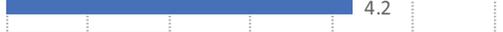
of prior record that included only adult convictions. Next, we calculated the total recommended minimum incarceration months using the lower limit of the standard range according to the guidelines, based on (1) actual placement on the sentencing matrix, inclusive of juvenile adjudications and lapsing if eligible; and (2) simulated placement on the sentencing matrix using the alternative prior record without any juvenile adjudications. The difference between these two sums is the total “cost” of a juvenile record in incarceration months. For example, consider an individual who has one prior record point (PRS 1) from a single juvenile adjudication. If they are convicted of an offense with OGS 5, the recommended lower limit of the standard range is one month of incarceration (see PRS 1 in Figure 4). If that individual did not have any juvenile adjudications, their PRS would be 0, with a recommended lower limit of the standard range of restorative sanctions (zero months). For this individual, “the cost” of their juvenile record was a one-month incarceration.

Because our sample consists of five sentencing years, we divided all values by 5 to produce annual estimates. Figure 5

shows the total cost of juvenile records for the total sample of juvenile records as well as for White, Black, male, and female defendants, both in absolute cost (recommended incarceration months) and as a proportion of total recommended minimum months of incarceration. It is important to remember that these numbers are conservative estimates of the cost of a juvenile record, as they do not take into account supervision time in the community.²⁹

Juvenile records increased recommended incarceration minimums, based on the lower limit of the standard range, by an average of nearly 20,000 months (1,664 years) per year for defendants sentenced during 2015–19. Black defendants accounted for approximately 60% of these recommended incarceration months, though they account for only 46% of offenders with juvenile records. Juvenile adjudications accounted for 34% of total recommended minimum incarceration months. Recommended incarceration minimums for women and Whites were slightly more affected, proportionally, by juvenile adjudications.³⁰ A more intuitive way of thinking of the consequences of juvenile adjudications is in the average difference in incarceration

Figure 6.
Average “Cost” of Juvenile Records, in Incarceration Months

		Total Months Attributable to		Average "Cost" of a Juvenile Record (months)						
		Adjudications	N	0	1	2	3	4	5	6
		99,843	24,302							
Race	Black	58,224	11,274							
	White	38,959	12,492							
Gender	Male	96,745	22,790							
	Female	3,098	1,512							

months at the individual level; this “cost” is displayed in Figure 6. Importantly, while the *relative* cost of a juvenile adjudication (in terms of recommended minimum incarceration length) is largest for women and Whites, the absolute costs of a juvenile record per defendant are larger for men and Black defendants.

VIII. What Are the Consequences of Utilizing Alternative Approaches to Counting Juvenile Adjudications?

There is no doubt that whether and how to include juvenile adjudications in the calculation of PRS requires the consideration and servicing of multiple goals of sentencing. A middle ground between full inclusion and full exclusion is found in jurisdictions that limit inclusion to serious crimes, implement lapsing/decay policies, and/or weight juvenile adjudications less heavily than adult convictions. Currently, Pennsylvania’s policies place it closer to “full inclusion”—while not all juvenile misdemeanors are included, some are; further, most people with juvenile records do not benefit from the current lapsing provision. Were Pennsylvania to consider limiting juvenile adjudications to the most serious offenses (“four-point” crimes of violence), adopt a decay policy that affects defendants without requiring them to be crime-free, or weight adjudications at 50% of their corresponding adult conviction value, what would happen to recommended sentences?

Figure 7 shows the type of recommended presumptive sentence—incarceration (county and state), community supervision, or restorative sanctions only—for adults with juvenile adjudications under the current counting approach and the absolute differences in presumptive sentence type under three alternative policy structures. Most individuals with juvenile adjudications are recommended to receive some form of incarceration; given the relatively minor crimes for which many of them are sentenced, this suggests that their PRS has some role in determining the type of recommended sentence. Accordingly, when we change the method of counting juvenile adjudications to reduce their importance through *any* of the three alternative policies examined here, the rate of recommended incarceration drops substantially (7–13% of the sample, depending on the alternative plan). These differences are largest for Alternatives A (only counting four-point juvenile offenses) and C

(counting juvenile records as 50% of their point value, plus capping the influence of juvenile adjudications). When only the most serious (four-point) offenses are counted, there is a shift of roughly 10% of offenders from a recommended sentence of incarceration to a recommended sentence of restorative sanctions. Defendants who are White or female tend to receive less substantial reductions in recommendations for incarceration than defendants who are Black or male, likely owing to the distribution of four-point juvenile offenses.

Figure 8 shows the total minimum incarceration months suggested by the guidelines under the current system and each of the three alternatives. Automatically lapsing juvenile offenses at twenty-five (with the exception of the most serious offenses) reduces total minimum recommended incarceration months by 12% (Alternative B). Larger reductions in incarceration minimums are achieved under plans A and C (26% and 22%, respectively). While women and White defendants receive the largest *relative* reductions in incarceration months under these policies; the absolute reduction is much larger for men and Black defendants.

IX. Discussion and Conclusions

Most sentencing guidelines manifest themselves in the form of a simple grid (or matrix), with one axis representing the severity of the current conviction offense and another representing criminal history. The intersection of these two dimensions yields a cell that typically includes a recommended sentence. Despite this inherent “simplicity,” the matrix itself represents an amalgamation of decisions, some of which could have been made decades ago, that have the potential to significantly impact the recommended sentence for individuals and overall justice system resources.

We assessed the impact that counting rules for prior record have on the type and duration of recommended sentences. Specifically, we focused on a set of rules related to how juvenile adjudications are considered in the calculation of PRS in the Commonwealth of Pennsylvania. We found that that one-third of the recommended minimum incarceration months, for adult offenders with prior juvenile adjudications, is attributable to juvenile adjudications.

Figure 7.
Presumptive Sentence Type Under Current Approach and Changes Under Alternative Policy Structures

	Current Practice	[A] Only Include 4 pt Juvenile	[B] Lapse All at 25 Except 4 pt	[C] 50% and Capping	
Incarceration	Total	63.5%	-13.0%	- 6.9%	-10.7%
	White	57.4%	-14.7%	- 9.0%	-12.4%
	Black	70.2%	-11.1%	- 4.7%	- 9.1%
	Male	64.9%	-12.9%	- 6.7%	-10.6%
	Female	41.3%	-13.9%	- 9.0%	-12.1%
Community Supervision	Total	36.1%	+ 3.3%	+ 4.5%	+ 7.8%
	White	41.8%	+ 3.1%	+ 5.8%	+ 8.9%
	Black	29.6%	+ 3.6%	+ 3.3%	+ 6.8%
	Male	34.7%	+ 3.7%	+ 4.7%	+ 7.8%
	Female	57.3%	- 3.3%	+ 2.6%	+ 7.1%
Restorative Only	Total	0.5%	+ 9.7%	+ 2.3%	+ 3.0%
	White	0.8%	+11.7%	+ 3.2%	+ 3.5%
	Black	0.2%	+ 7.5%	+ 1.4%	+ 2.3%
	Male	0.4%	+ 9.2%	+ 2.1%	+ 2.8%
	Female	1.4%	+17.2%	+ 6.3%	+ 5.0%

Note: Reported changes represent *absolute* differences in the total percent of cases resulting in a specific presumptive sentence.

Figure 8.
Differences in Incarceration Minimum Months Under Alternative Policy Structures

	Current Practice	[A] Only Include 4 pt Juvenile			[B] Lapse All at 25 Except 4 pt			[C] 50% and Capping		
	Total	Total	Diff	% Diff	Total	Diff	% Diff	Total	Diff	% Diff
Total	294,032	217,656	76,376	- 26%	260,217	33,815	- 12%	229,414	64,618	- 22%
White	101,618	72,014	222,018	- 29%	84,467	209,565	- 17%	75,157	218,875	- 26%
Black	183,795	139,295	154,737	- 24%	168,081	125,951	- 9%	147,293	146,739	- 20%
Male	286,926	212,894	81,138	- 26%	254,441	39,591	- 11%	224,354	69,678	- 22%
Female	7,106	4,762	289,270	- 33%	5,776	288,256	- 19%	5,060	288,972	- 29%

We also examined the “costs” under three different scoring regimes. The differences between these alternatives highlight the impact that each element of the scoring rules—elements that determine how the guidelines function in practice—can have on recommended sentencing outcomes and durations.

In this sample, the proportion of defendants sentenced who are affected by these decisions is relatively small, accounting for slightly more than 6% of all defendants during 2015–19. However, this low rate conceals important differences across race. Black defendants are much more likely to have juvenile adjudications affect their sentence than are White defendants. Further, the adjudications on their record and the offenses they are sentenced for are, on average, more serious than those for Whites, meaning that the consequences of juvenile adjudications are more likely to lead to increases in incarceration. This ultimately translates to a greater average “cost” of juvenile adjudications for Black defendants.

It is tempting to take these findings at face value, as an inherent consequence of juvenile offending. However, these findings are especially probative given advances in our understanding of brain cognition over time. In particular, the left frontal lobe, which is responsible for reflective thought and impulse control, is not fully developed until around age twenty-four.³¹ Science shows that without this cognitive resource, an adolescent depends on the amygdala, which is the portion of the brain responsible for emotion, when making a decision. Thus, the decisions one makes as a youth are not necessarily indicative of the decisions one will make as an adult.³² This evidence has been cited in an appellate decision limiting the application of the death penalty in cases with juvenile defendants.³³

It is critical to remember that the guidelines and the counting rules that undergird them are themselves normative, reflecting sentiments on punishment at the time of their inception. Over time, perspectives on crime and the purposes of punishment can evolve in response to the

identification of evidence-based practices and to changes in societal views, through development and introduction of new offense types, and through appellate review. It is important that guidelines are updated to reflect these shifts. Sentencing commissions are uniquely situated to leverage sentencing data to provide empirical insights into the impact and costs associated with alternative policies. Following a straightforward approach such as that presented in this Article, sentencing policies can be assessed for proportionality, and the potential impact of policies and proposed changes can be shared with legislators and state sentencing commissions to help them make more informed decisions.

Pennsylvania is currently in the process of revising its guidelines and may choose to consider alternative structures for incorporating juvenile adjudications in prior record. As shown above, the decisions regarding whether to incorporate juvenile adjudications, which ones, and how much to weight them, have substantial impact on recommended sentences. What is more striking is that these substantial consequences are often from one or two adjudications for fairly minor offenses committed by minors. The inclusion of juvenile adjudications may also play a role in continuing the cumulative disadvantage for Black defendants.³⁴ Thus, while policies reflect many competing sentencing goals and interest groups, it is important to assess the costs of particular policies, not only in correctional spending, but for the individuals affected.

Notes

¹ John H. Kramer & Jeffery T. Ulmer, *Sentencing Guidelines: Lessons from Pennsylvania* (2009).

² Alex R. Piquero et al., *The Criminal Career Paradigm*, 30 *Crime & Just.* 359 (2003).

³ Thomas J. Bernard & Megan C. Kurlychek, *The Cycle of Juvenile Justice* (2010); Barry C. Feld, *Competence and Culpability: Delinquents in Juvenile Courts, Youths in Criminal Courts*, 102 *Minn. L. Rev.* 473 (2017).

⁴ Dean J. Champion, *The Juvenile Justice System: Delinquency, Processing, and the Law* (2001).

⁵ Richard E. Redding, *Using Juvenile Adjudications for Sentence Enhancement Under the Federal Sentencing Guidelines: Is It Sound Policy?*, 10 *Va. J. Soc. Pol'y & L.* 231 (2002).

⁶ James T. Carey & Patrick D. McAnany, *Introduction to Juvenile Delinquency: Youth and the Law* (1984).

⁷ Jean J. Cabell & Shawn C. Marsh, *Swing and a Miss: Reflections on the "Voluntariness" of Pleas in Juvenile Court*, 117 *Child. & Youth Services Rev.* 105300 (2020); Thomas Grisso, *Juveniles' Waiver of Rights: Legal and Psychological Competence* (1981).

⁸ Bernard & Kurlychek, *supra* note 3.

⁹ Act 1978-319 § 2154(2).

¹⁰ Kramer & Ulmer, *supra* note 1, at 25.

¹¹ North Carolina is the only guidelines state to not include juvenile adjudications. Also worth noting, North Carolina is the only state that maintains sixteen as the age of adulthood for criminal justice processing purposes.

¹² Regents of the University of Minnesota, *Prior Juvenile Adjudications* (2015).

¹³ Arkansas, District of Columbia, Delaware, Massachusetts, Minnesota, Oregon, Tennessee, Washington.

¹⁴ Arkansas, Massachusetts, Tennessee.

¹⁵ Pennsylvania's categorization of felony vs. misdemeanors differs from that of other jurisdictions, meaning that many serious (M1) misdemeanors are considered felonies in other jurisdictions.

¹⁶ Federal, Florida, Kansas, Maryland, Michigan, Utah, Virginia.

¹⁷ Alabama.

¹⁸ Alabama, Arkansas, District of Columbia, Maryland, Michigan, Minnesota, Utah, Virginia, Washington; Federal.

¹⁹ Arkansas, District of Columbia, Maryland, Minnesota, Utah; Federal.

²⁰ These convictions include juveniles processed and sentenced as adults. Some convictions are not required to be reported to the Commission, including Philadelphia Municipal Court sentences (DUIs and other misdemeanors), magisterial sentences (DUIs and M3 offenses), summary offenses, accelerated rehabilitative dispositions, disposition in lieu of trial, and probation without verdict.

²¹ Records with reported Offense Gravity Scores (OGS) of 15 or 0 are excluded to limit the sample to those who are sentenced according to the Basic Sentencing Matrix. These OGS scores are generally reported for homicide, which is not subject to the Basic Sentencing Matrix.

²² Convictions for summary offenses and/or one misdemeanor offense with a statutory maximum of one year or less do not impact the determination of the lapsing period (§ 303.6(c)(1)(iii)).

²³ Four-point offenses include murder, kidnapping, rape, aggravated assault causing serious bodily injury, and other crimes of violence (42 Pa.C.S. § 9714(g)).

²⁴ Note that the PRS category differs from PRS points; Pennsylvania's two highest prior record categories (RFEL and REVOC) require both a certain number of points and certain characteristics of prior offenses; REVOC also requires the current conviction offense to be an offense where the lower limit of the standard range recommendations is twelve months or more (Offense Gravity Score of 9 or higher).

²⁵ The OGS ranges from 1 (e.g., Misdemeanor 3) to 14 (e.g., Murder 3) and defines the vertical axis of the Basic Sentencing Matrix. OGS is assigned to each instantaneous offense, based on the elements of the conviction and the classification of the crime. The intersection of OGS and PRS provides the guideline sentence recommendation.

²⁶ Pennsylvania Commission on Sentencing, *2019 Annual Report* (2020).

²⁷ 204 Pa. Code § 303.16(a).

²⁸ The sentencing "levels" provide a range of sentencing options to the court. For example, the standard range sentence for Level 1 offenders (PRS 0 and OGS 1 or 2) is Restorative Sanctions (RS). For Level 2 offenders the standard range requires a county sentence but permits both incarceration and non-confinement. Treatment is recommended for drug-dependent offenders. For Level 3 offenders the standard range is defined as having a lower limit of incarceration of less than twelve months. Included are offenses for which state or county intermediate punishment sentence is authorized by statute. If eligible, treatment is recommended for drug-dependent offenders in lieu of incarceration (see 204 Pa. Code § 303.1).

²⁹ It is important to highlight that all cost analyses presented in this Article are based on guideline recommendations, not on sentences imposed under the guidelines.

³⁰ This is primarily due to differences in adult convictions; women and Whites are less likely to have adult convictions in addition to juvenile adjudications, compared to men and Black defendants. However, differences in OGS for the current offense also play a role. Consider, for example, an individual who is convicted of an offense with OGS 5 and PRS 2, resulting from a single juvenile adjudication. The difference between

PRS 0 and 2, in incarceration months, is three months; however, in relative terms, 100% of the incarceration months can be attributed to the juvenile adjudication. Compare this to a similar individual with PRS 2 from one juvenile adjudication being sentenced for an offense with OGS 7. The difference between PRS 2 (recommended minimum incarceration twelve months) and PRS 0 (recommended minimum incarceration six months) is six months. While the absolute difference for this person is larger, the *relative* difference is only 50%. Because Black and male defendants are more likely to be convicted of more serious offenses, the *proportion* of recommended incarceration months attributable solely to juvenile adjudications is smaller.

- ³¹ Jay N. Giedd et al., *Brain Development During Childhood and Adolescence: A Longitudinal MRI Study*, 2 *Nature Neuroscience* 861 (1999).
- ³² Thomas Grisso & Robert G. Schwartz, *Youth on Trial: A Developmental Perspective on Juvenile Justice* (2000); Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009 (2003).
- ³³ *Roper v. Simmons*, 543 US 551, 2005.
- ³⁴ Ryan D. King, *Cumulative Impact: Why Prison Sentences Have Increased*, 57 *Criminology* 157 (2019); Rhys Hester et al., *Prior Record Enhancements at Sentencing: Unsettled Justifications and Unsettling Consequences*, 47 *Crime & Just.* 209 (2018).