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**EXTENDED JURISDICTION JUVENILE
(EJJ) OFFENDERS:
A STUDY OF REVOCATIONS**

December 2001



INSTITUTE ON CRIMINAL JUSTICE

THE UNIVERSITY OF MINNESOTA LAW SCHOOL

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UNIVERSITY OF MINNESOTA

Twin Cities Campus

*Institute on Criminal Justice
Law School*

*N160 Walter F. Mondale Hall
229-19th Avenue South
Minneapolis, MN 55455
612-624-1885
Fax: 612-624-1823
E-mail: icj@umn.edu
www.law.umn.edu/centers/crimjust.htm*

February 28, 2002

Ms. Robbie LaFleur, Director
Legislative Reference Library
645 State Office Building
St. Paul, MN 55155-1050

Dear Ms. LaFleur:

Recently, you received a copy of a report published by the Institute on Criminal Justice, entitled Extended Jurisdiction Juvenile (EJJ) Offenders: A Study of Revocations (December 2001). It has come to our attention that information in one of the charts (Chart 15) was incorrectly displayed. The enclosed errata sheet contains a corrected Chart 15.

Please note that this inadvertent error affects neither the validity of the data underlying the report nor the conclusions that are based on these data. As the corrected graph illustrates and as the report states on the page proceeding Chart 15, our data show that EJJ offenders convicted of presumptive prison offenses were more likely to receive executed prison sentences upon revocation than those offenders convicted of presumptive probation offenses.

Thank you for your attention to this matter.

Sincerely,



Emily Shapiro, JD
Senior Planning and Policy Associate



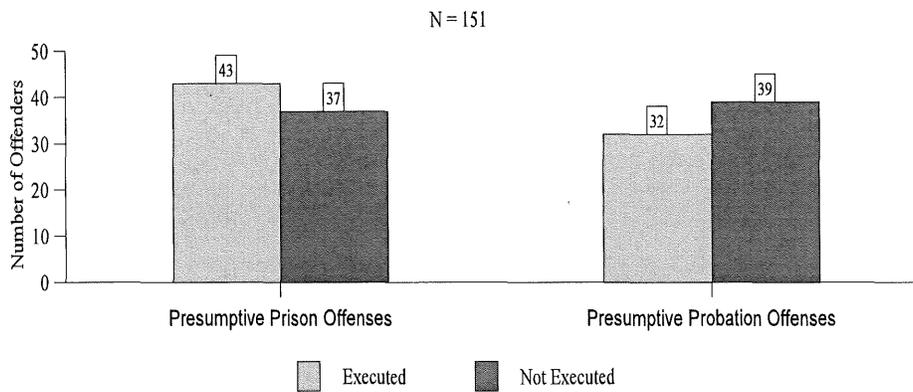
Holly Miller, MA
Policy and Planning Analyst

Extended Jurisdiction Juvenile (EJJ) Offenders: A Study of Revocations (December 2001)

Institute on Criminal Justice

Errata Sheet

Chart 15 (revised): Sentence Execution by Offense Type



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**EXTENDED JURISDICTION JUVENILE
(EJJ) OFFENDERS:
A STUDY OF REVOCATIONS**

December 2001



INSTITUTE ON CRIMINAL JUSTICE

THE UNIVERSITY OF MINNESOTA LAW SCHOOL

Institute on Criminal Justice
University of Minnesota Law School

Co-Directors

Janet Wiig, JD, MSW
Executive Director

Richard Frase, Professor of Criminal Law
Director of Research

* * *

Emily Shapiro, JD
Senior Planning and Policy Associate

Robert Weidner, PhD
Research Associate

Abigail Gewirtz, PhD
Senior Planning and Policy Associate

Holly Miller, MA
Planning and Policy Analyst

Cheryl Casey
Associate Administrator

Katie Dupay
Administrative Assistant

Emily Shapiro and Holly Miller conducted the research for this study and prepared the report with administrative support from Katie Dupay.

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EXECUTIVE SUMMARY

At the request of the Minnesota Legislature, the Institute on Criminal Justice at the University of Minnesota Law School undertook a study of extended jurisdiction juvenile (EJJ) offenders whose EJJ status was revoked and upon whom adult sanctions were imposed. In conducting this research study, the Institute focused on offenders whose EJJ status was revoked in either 1999 or 2000 and sought to answer the following questions:

- What were the demographic characteristics of these offenders?
- What were their offense and offense history characteristics?
- What were the provisions of their EJJ sentences?
- Why was their EJJ status revoked?
- What types of adult sanctions did they receive following revocation of EJJ status?
- How did these adult sanctions compare to those imposed on similarly-situated adult felons at the time of their initial sentencing?

The Institute answered these research questions based on three separate data sources. First, it collected quantitative data by reviewing the case files of all the revoked EJJ offenders who came within the research study's time frame. Second, it surveyed the judges who made the revocation decisions in these cases, asking them questions relating to the reasons for their revocation and sentencing decisions. Third, it compared some of the data collected on revoked EJJ offenders with data collected by the Minnesota Sentencing Guidelines Commission on felony offenders who were sentenced in 1999.

Research findings relating to demographic characteristics. Based on computerized data maintained by the Minnesota Supreme Court and case files maintained by the district courts, the Institute identified 151 offenders whose EJJ status was revoked in 1999 or 2000. All but eight of these offenders were male. White offenders accounted for slightly more than one-half of the population while approximately one-quarter consisted of African Americans. Other racial and ethnic groups represented were, in descending order of size, American Indians, Hispanics, Asian Americans and offenders identified as being of mixed race. None of the offenders in the study were under 15 years of age at the time of their EJJ offense conviction and most of them were 16 or 17 years old as of that date. Almost one-third of the offenders were 18 years old or older at the time of conviction. Revocation proceedings concerning the offenders in this study arose in all ten judicial districts, with approximately one-half of them arising in the seven-county metropolitan area, and the remainder in Greater Minnesota.

Research findings relating to offense and offense history characteristics. Most of the offenders in this study were designated EJJ after waiving either a certification hearing or an EJJ designation hearing and pleading guilty to one or more of the charged offenses or a lesser-included offense. Most offenders were convicted of a single offense; in those cases where an offender was convicted of more than one offense, the Institute analyzed only the most serious offense. The study analyzed these EJJ conviction offenses from a number of perspectives: the name of the offense, whether it was a person, property or public order offense, and whether it was a presumptive prison offense under the sentencing guidelines. Through these analyses, the Institute found that almost one-half of the offenders were convicted of either second degree assault or aggravated robbery. The third most common offense was burglary. Offenses against the person predominated, accounting for almost 62 percent of all offenses analyzed, followed by property offenses and public order (including drug) offenses. More than one-half of the offenses were classified as presumptive prison offenses. Four offenders were convicted as EJJ of nonfelony-level offenses.

The offense histories of the revoked offenders were varied. While almost two-thirds of them had a prior felony record, a significant proportion of them (13 percent) had no prior offense record or a record only of status offenses. The remaining 24 percent had a prior record consisting only of nonfelony offenses and status offenses. When these offense histories were analyzed in terms of the severity of the offender's EJJ offense and his or her age, it appears that the vast majority of offenders with no prior criminal record were in the EJJ system due to the seriousness of the current offense. These offenders also tended to be 17 years old and older, indicating that their relatively older ages were another reason why they were in the EJJ system.

Research findings concerning the provisions of the EJJ dispositions. Almost all of the EJJ offenders received a stayed prison sentence as part of their EJJ disposition. These prison sentences ranged in duration from a year and a day (the minimum felony sentence) to 40 years. More than two-thirds of the offenders received stayed prison sentences ranging from 13 months to four years in length. The offenders who were convicted of nonfelony offenses received stayed jail sentences ranging from 90 days to 365 days in length.

The offenders also received a variety of juvenile dispositions as part of their EJJ sentences. The vast majority of them were placed on supervised probation and three-quarters of them were placed in a residential correctional or treatment facility. They also received a variety of other dispositions, including requirements to participate in chemical dependency assessment or treatment, to abstain from chemicals, to pay restitution or perform community service, and to maintain schooling and/or employment.

Research findings concerning revocation of EJJ status. The revoked offenders in the Institute's data base were convicted of their EJJ offenses as long ago as March 1995 and as recently as November 2000. The average length of time between conviction and revocation was 20 months. About one-fifth of offenders were revoked within the first year and 60 percent within

two years of conviction.

The Institute's case file review revealed that the EJJ status of approximately one-half of the offenders was revoked because they allegedly committed a new crime. In about one-half of the revocations based on criminal activity, the new crime alleged was a felony-level offense. In those cases where the offender's EJJ status was revoked for a probation violation not involving criminal activity, the behavior typically involved failure to abstain from drugs or alcohol, failure to maintain contact with the probation officer, and absconding from or failing to comply with the rules of a residential placement. The Institute's case file review also revealed that most of the offenders had ongoing problems complying with one or more of the juvenile dispositions prior to the incident leading to revocation and that many of these problems related to ongoing chemical dependency issues.

The 29 judges who responded to the Institute's survey explained in greater detail why they revoked EJJ status in the cases over which they presided. The most common reasons cited were the commission of a serious new crime and the commission of serious or repeated violations of probation. They also identified the characteristics which, in their opinions, distinguished the offenders who failed (*i.e.* were revoked) from those who succeeded. Many judges mentioned the presence or absence of a stable living environment and ongoing chemical dependency problems as being the most important factors contributing to an EJJ offender's success or failure.

Research findings concerning sentencing decisions made after EJJ revocation. The Institute analyzed the revoking judges' adult sanction decisions in detail. This detailed analysis showed that the judges ordered executed prison sentences in about one-half of the cases and that the stay of sentence be continued in the remaining one-half. In order to understand this outcome better, the Institute analyzed sentence execution rates in terms of a number of variables, including the offender's age at the time of conviction, race or ethnicity, geographic location, offense severity, offense history, and the reason (probation violation or new offense) for the revocation. Some of these variables, such as age and geographic location, did not appear to influence the sentencing outcome. Others, such as race or ethnicity, offense severity, offense history, and the seriousness of the behavior causing revocation of EJJ status, may have had an effect on the sentencing outcome.

The Institute also looked at the extent to which the revoking judges deviated from the presumptive sentences provided under the sentencing guidelines and found that the judges ordered the presumptive sentence in about one-half the cases, departed downward in about one-quarter of the cases and departed upward in one-fifth of the cases. Offenders with no criminal history or a record of only status offenses were the most likely ones to receive no departure or a downward departure. Offenders with a felony record accounted for most of the upward departures.

When the Institute examined the types of adult sanctions imposed on the offenders who were not

committed to prison, it found that the vast majority of them were ordered to serve time in a local correctional facility as a condition of probation. However, except for ordering most of them to serve a specified amount of time on probation, the judges did not tend to order these probationers to comply with the range of treatment and rehabilitative-oriented conditions that they had ordered in the original EJJ disposition.

The Institute also did some follow-up research on the revoked offenders in this study who were given stayed prison sentences to learn whether any of them had, nevertheless, ended up in prison. It learned that of the 76 offenders who were given stayed prison sentences, 20 of them were committed to state prison following revocation. Of this number, 13 offenders were sentenced to prison on the original EJJ offense and the remaining seven were sentenced to prison for different felony offenses.

Research findings concerning the comparison of the revoked EJJ offenders to similarly-situated adult felons. Because of the many differences between the population of revoked EJJ offenders and the population of adult felony offenders, the Institute decided that it could not conduct a detailed comparison between the two groups. However, it did compare the EJJ offenders with their adult counterparts with respect to two variables: overall incarceration rates and presumptive sentence departure rates. It found that the overall incarceration rate (*i.e.* prison and jail) of the revoked EJJ offenders was 94 percent, higher than the incarceration rate reported by the Minnesota Sentencing Guidelines Commission for adult felony offenders sentenced in 1999 (88 percent). With respect to sentencing departure rates, the comparison is more complex and less exact. To the extent data are comparable, however, the EJJ offenders who were convicted of assault in the second degree, the most frequent EJJ conviction offense, were imprisoned at a higher rate than their adult counterparts. Similarly, EJJ offenders convicted of a person offense classified at severity level VII were imprisoned at a higher rate than adult felons convicted of similar offenses. It should be noted that many other variables, such as age, offense history, and the context in which these sentences were ordered, may be wholly or partially responsible for these differences.

Conclusions of the research study. In keeping with the mainly descriptive nature of this research study, the Institute did not attempt to reach any overarching conclusions as to whether the EJJ law is being implemented poorly or well or why some offenders succeed and others fail. However, its report does provide a foundation of information to help policy makers and other experts start answering these questions. In particular, the report paints a picture not only of who the revoked offenders are but also how the system deals with them. It also raises some concerns about the law's impacts and about some of the ways in which it is implemented and presents suggestions on how to improve the law to better meet the needs of higher-risk offenders. In the final analysis, the Institute concludes that, however mixed the success of the EJJ law may be, to the extent it gives special attention and resources to juvenile offenders with difficult and complex needs, the law is meeting a compelling and worthy objective.

INTRODUCTION

Over the past two decades, the Minnesota Legislature has enacted a number of laws designed to respond to serious and chronic violations of the criminal law committed by juvenile offenders. Until 1994, the traditional legislative response to these serious and chronic juvenile offenders was to streamline the process for transferring them to the adult criminal justice system for trial, sentencing and punishment. In 1994, however, the legislature created an alternative to the adult certification law designed to respond to those “intermediate-level” offenders who appear to be amenable to treatment in the juvenile justice system but who warrant a stronger, lengthier response than is available through the normal juvenile delinquency track. This alternative process, known as the “extended jurisdiction juvenile” (EJJ) law, became effective in January, 1995.

As explained in a recent study of serious and chronic juvenile offenders,¹ the EJJ law

represents the legislature’s determination that certain serious or chronic juvenile offenders should be given a “last chance” to respond positively to the rehabilitative intervention of the juvenile justice system before being turned over to the punishment-oriented criminal justice system ... [The EJJ law] seeks to rehabilitate the offender while, at the same time, providing strict accountability and necessary public protection.

Specifically, the EJJ law provides juveniles this “last chance” in juvenile court by placing the offender in a hybrid juvenile-adult category. When a juvenile is convicted as an EJJ offender, the juvenile court imposes one or more juvenile EJJ dispositions, such as supervised probation, residential placement in a juvenile facility, restitution, treatment, etc. At the same time, the court also imposes an adult prison sentence and stays this sanction on condition that the juvenile comply with the EJJ disposition until age 21. If the juvenile fails to comply with the juvenile EJJ disposition or commits a new offense, the court is authorized, without a further *de novo* hearing, to revoke the juvenile’s EJJ status and either execute the previously-imposed prison sentence or order different adult-level criminal sanctions.

Since the EJJ law’s enactment, its implementation has been studied several times.² Most recent

¹ Institute on Criminal Justice, *Serious and Chronic Juvenile Offenders*, pp. 13-14 (December, 2000). The Institute conducted this study for the Minnesota Department of Corrections.

² See e.g. Podkopacz and Feld. *The Back Door to Prison: Waiver Reform, “Blended Sentencing,” and the Law of Unintended Consequences*, Journal of Criminal Law and Criminology. (Fall 2001) (publication forthcoming); Minnesota Department of Corrections. *Serious and Chronic Juvenile Offenders*. (December 2000); Minnesota Supreme Court, State Court Administrator’s Office. *Juvenile Justice Issues: Statistical Overview of EJJ and Adult Certification Data 1996, 1997, & 1998*. (June 2000) (hereafter cited as “Minnesota Supreme Court report”); Office

studies have focused on comparing the characteristics of EJJ offenders to those of certified offenders, particularly those offenders who were certified to adult court before the hybrid EJJ category became available in 1995. Based on these studies and other sources of information on the law's implementation, a policy debate has been emerging concerning whether the EJJ law is fulfilling its original legislative intent. On the one side, some argue that the law is having an unintended "net-widening" effect and is subjecting greater numbers of less chronic and less serious juvenile offenders to both actual and potential criminal justice sanctions than the legislature had intended. On the other side, others argue that the EJJ law is not being implemented strictly enough and that too many EJJ offenders are being allowed to violate their juvenile dispositions multiple times without being held accountable through execution of their previously-imposed prison sentence.

This research study does not seek to settle this policy debate. It does, however, seek to shed some light on how juvenile courts around the state are responding to EJJ offenders who "fail" and whose juvenile disposition has been revoked. While prior research studies have shown that approximately one-half of revoked EJJ offenders receive an executed prison sentence following revocation, little is known about the types and severity of adult sanctions that are imposed on the remaining offenders who are not committed to state prison. Likewise, information is lacking on the characteristics of these offenders and their offenses, and on the reasons why judges revoked their EJJ dispositions. By providing detailed information on these and other issues surrounding revoked EJJ offenders, this study, hopefully, will help to advance the discussion concerning whether the EJJ law is serving its intended purposes.

The specific parameters for the research study are set forth in the legislation that was passed during the 2001 legislative session directing the Institute on Criminal Justice at the University of Minnesota Law School (hereafter "Institute") to conduct this research.³ This legislation requires the Institute to:

study the sanctions imposed by judges on extended jurisdiction juveniles whose juvenile court disposition is revoked. The study must include, at a minimum, the following information on these offenders:

- *the offense for which the offender originally was convicted as an extended jurisdiction juvenile;*
- *the provisions of the juvenile disposition and the adult criminal sentence originally imposed by the sentencing court;*

of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. *Juveniles Facing Criminal Sanctions: Three States That Changed the Rules*. (April 2000); and Minnesota Department of Corrections. *Extended Jurisdiction Juveniles in Minnesota: January 1, 1995 - October 31, 1996*. (July 1997).

³ See 2001 Minnesota Laws, First Special Session, chapter 9, article 18, section 3, subdivision 4.

- *the reason why the juvenile disposition was revoked;*
- *if the offender's stayed prison sentence was executed, the duration of the executed sentence; and*
- *if the offender's stayed prison sentence was not executed, the adult criminal sanctions that were imposed as a condition of the stayed sentence including, but not limited to, jail time, restitution, fine, probation, home detention, and treatment.*

If possible, the study shall include a comparison of the adult criminal sanctions imposed on revoked extended jurisdiction juvenile offenders with the criminal sanctions imposed on similarly-situated adult criminal offenders at the time of their initial sentencing.

The report is organized as follows. First, it discusses the demographic characteristics of the offenders covered by the study, followed by a discussion of their offenses and offense histories. Next it describes the types of sentences imposed on them at the time of their EJJ conviction. Third, it discusses the circumstances under which their EJJ status was revoked and describes some of the reasons why these revocations occurred. Finally, the report focuses on the adult sanctions imposed on the offenders following revocation of EJJ status and, where possible, compares these adult sanctions with those imposed on similarly-situated adult felony offenders.

The Institute gratefully acknowledges the assistance it received from state court personnel throughout the state in conducting its research. Minnesota Supreme Court research staff spent many hours helping the Institute obtain a court order to access the data and assembling a computerized data base on revoked EJJ offenders for the Institute's use. Court administrators and their staff in the district courts were unfailingly gracious in their efforts to accommodate the travel schedule of the Institute's researchers, making case files available when needed, agreeing (when asked) to consolidate case files at a single county courthouse within the larger judicial districts to minimize travel time, and providing office space for Institute researchers to review the files. Their help made it possible for the Institute to complete its research in an efficient and effective manner.

RESEARCH METHODOLOGY

Minnesota Supreme Court order and computerized data base. The Institute began its data collection efforts for this study by obtaining a court order from the Minnesota Supreme Court authorizing the Institute to obtain and review private data on EJJ offenders whose dispositions were revoked in 1998, 1999, or 2000.⁴ After obtaining the necessary court order, the Institute obtained a computerized data base from the Minnesota Supreme Court consisting of all cases in which an EJJ revocation hearing was *scheduled* in any one of these years. From this data base, the Institute hoped to identify all of the cases in which a juvenile offender's EJJ status was, in fact, revoked during this three-year time period. The Institute also hoped to answer most of the following research questions from information in the computerized data base:

- the characteristics of the offenders whose EJJ status was revoked (*i.e.* gender, age, race, geographic location, etc.)
- the nature of their offenses and offense histories
- the provisions of their juvenile dispositions and stayed prison sentences
- the reason why their EJJ status was revoked and
- the nature of the adult sanctions imposed by the court upon revocation.

The Institute then planned to select a sample of offenders from the total population of cases and examine their case files in further detail to learn more about the reasons why their EJJ status was revoked and, more importantly, the rationale behind the judge's decision to order the particular adult sanctions that were imposed.

Because there were limitations to the computerized data base, both in terms of the information needed to answer the research questions and reporting inconsistencies, it became clear that the Institute would need to change its plans and, instead, collect most of the information it needed from the case files maintained by the district courts around the state. Due to the magnitude of this data collection effort and the limited time available to complete the study for legislative review, the Institute decided to limit the population of cases studied to those in which a revocation occurred in either calendar year 1999 or 2000. With this limitation, the Institute was able to collect detailed information from the case files on all juvenile offenders whose revocation occurred within this two-year time period and, thereby, avoided having to limit some of its data collection efforts to only a sample of cases.

⁴ Order Authorizing Disclosure of Juvenile Court Records, #C4-85-1848 (Minn.) (August 15, 2001). A copy of this court order is contained in Appendix A.

Quantitative data collection methodology. The Institute used the computerized data base obtained from the Supreme Court to identify, by using date fields and revocation hearing codes, all of the possible cases in which an offender's EJJ status may have been revoked in 1999 or 2000. In those cases where the date fields were blank or also included earlier or later years, the case was retained for case file review at the courthouse. This resulted in the review of many case files that, upon inspection, proved to be outside the parameters of the study but also ensured that cases were not excluded by mistake or oversight. If an offender had more than one case file (due multiple offenses), all of those files were reviewed in order to learn whether the offenses were handled in a single EJJ proceeding or as separate proceedings. In all cases, except one, the Institute learned that these multiple case files were consolidated in single proceedings. In those cases, the Institute also consolidated the files as a means of ensuring that the methodology was offender-based, rather than case-based. The one offender who was the subject of two separate EJJ revocation proceedings occurring at different times was counted twice because the proceedings were factually and legally distinct.

After identifying all of the cases the Institute wanted to review, it developed a data collection instrument⁵ and tested it in two counties before refining it for use statewide. Two Institute researchers worked together in developing the data collection instrument and were exclusively responsible for collecting all of the quantitative data used in this study. This approach helped to ensure that the information was collected in a consistent fashion. The researchers then visited courthouses around the state, reviewing the information in the case files in detail (*i.e.* court petitions, hearing transcripts, background studies, probation reports, offense history reports, and sentencing orders) and recording the relevant data on the data collection form. Once the data collection was completed, the information on the forms was entered into a computerized data base for analysis.

Other research methodologies used. In addition to reviewing the information in the case files, the Institute also sent a survey to the 71 judges who revoked an offender's EJJ status in 1999 or 2000, asking them questions about their reasons for revoking the EJJ juvenile disposition and for deciding to execute or stay the adult prison sentence.⁶ The purpose of this survey was to understand better the judges' decision making process and hear their views on the operation and implementation of the EJJ law. The Institute received responses from 29 of these judges and used their responses to provide additional context for its analysis of the judges' revocation and sentencing decisions.

The Institute also responded to the legislature's request for a comparison of the EJJ offenders' adult sentences with sentences imposed on similarly-situated adult felony offenders. The purpose of this comparison was to determine, if possible, whether the study's revoked EJJ

⁵ A copy of the Institute's data collection instrument is contained in Appendix B.

⁶ A copy of the Institute's survey is contained in Appendix C.

offenders were treated more or less harshly by the sentencing judge than they would have been if they had been adult felony offenders within the criminal justice system. The Institute was unable to perform a detailed comparison between these groups because they differed with respect to too many variables (*i.e.* offenses, offense histories, demographic characteristics). They also differed from each other with respect to the context within which they were being sentenced: *i.e.* a revocation hearing following violation of a court's dispositional order versus (in most cases) an initial sentencing. Despite these issues, the Institute did make some limited comparisons between the groups regarding two variables: overall incarceration rates and sentencing departures for offenders convicted of certain presumptive prison offenses. This comparison is based primarily on data published by the Minnesota Sentencing Guidelines Commission in recent reports and on information in the Institute's data base.

DEMOGRAPHIC CHARACTERISTICS OF REVOKED EJJ OFFENDERS

This section provides basic, demographic information on the offenders whose EJJ status was revoked in calendar year 1999 or 2000. It describes their gender, race or ethnicity, age at the time of EJJ conviction, and geographic location. Where possible, this information on revoked offenders is compared to demographic information on EJJ offenders generally, as previously reported by the Minnesota Supreme Court.

Total number. According to the Institute's analysis of the case files it reviewed in the courthouses, the EJJ status of 151 juveniles⁷ was revoked in 1999 and 2000. Seventy-two of these revocations occurred in 1999 and 79 of them occurred in 2000. The group consisted of juveniles whose EJJ convictions occurred as long ago as March 1995 and as recently as November 2000.

It would be interesting to know what revocation rate these totals represent with respect to the average number of offenders who are convicted as EJJ in a given calendar year. Although there are data on the total number of cases disposed as EJJ each year,⁸ these annual totals do not include EJJ offenders who are under continuing EJJ jurisdiction from previous years and, therefore, are *eligible* to be revoked in a given calendar year. Nor do they account for those EJJ offenders who have completed their EJJ supervision successfully in a given year and, therefore, should no longer be counted in the total number. Nevertheless, recognizing that the proportions are imprecise, it may be useful to know that the average number of revoked offenders in each year of the Institute's data base (75) represents about one-third of the average number of cases reported to have been disposed as EJJ each year from 1995 to 1998 (228).⁹

⁷ It is possible that two additional revocations occurred in this time period; unfortunately the court administrators in the two counties where these revocations occurred could not locate the case files. It also is possible that, like many cases originally identified from the computerized data base, these two cases did not result in revocations but, instead, merely had revocation hearings. In either event, the population of revoked offenders analyzed in this report does not include these two missing cases.

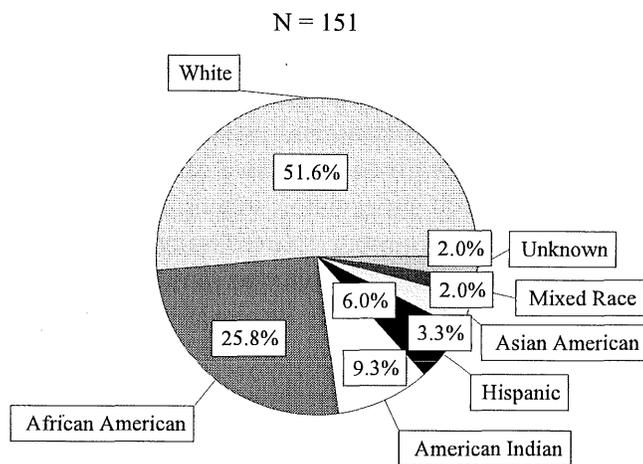
⁸ Minnesota Supreme Court report, note 2, *supra*, table 4. The reader is cautioned that the Supreme Court's data are not directly comparable to the Institute's data for two reasons. First, the Court's data are based on a different time period than the Institute's data: cases disposed as EJJ in 1995 to 1998 versus EJJ offenders revoked in 1999 or 2000. Second, the Supreme Court's data are based on cases rather than individual offenders and count separately each case that has been assigned a case file number even when multiple cases are handled in a single proceeding. This case-based approach results in a greater number of EJJ cases than the Institute's offender-based approach and, arguably, results in over-representation of those offenders who commit multiple offenses. For these reasons, one must be careful not to draw too close a comparison between these two sets of data.

⁹ See also Institute on Criminal Justice. *Serious and Chronic Juvenile Offenders*. p. 24 (December 2000) for a similar attempt to derive an annual EJJ revocation rate. It should be noted that the Minnesota Supreme Court currently is revising and improving its EJJ data base and that, in the future, the data base will be capable of providing

Gender. The revoked EJJ offenders identified by this study were almost exclusively male. Of the total 151 offenders, 143 (95 percent) were male and only eight (five percent) were female. These proportions are consistent with gender data on EJJ offenders generally: in 1998, males were the subject of 94 percent of all cases disposed as EJJ.¹⁰

Race or ethnicity. Chart 1 illustrates the racial and ethnic breakdown of the 151 revoked EJJ offenders. It shows that white juveniles accounted for slightly more than one-half of the total, while African American juveniles comprised almost 26 percent of the revoked offenders. The third largest ethnic group consisted of American Indian youth (nine percent), followed by juveniles identified as Hispanic (six percent). The remaining juveniles were Asian American or of mixed racial heritage. The race of three juveniles (two percent of the total) could not be derived from the case files.

Chart 1: Race/Ethnicity



The racial breakdown of revoked EJJ offenders differs somewhat from that reported for EJJ cases overall, particularly with respect to white and African American juveniles. According to data collected by the Minnesota Supreme Court, 42 percent of all cases disposed as EJJ from January 1995 to October 1998 involved white offenders and 35 percent involved African Americans. Although the data are not directly comparable,¹¹ it is possible that higher proportions of white EJJ offenders and lower proportions of African American offenders are being revoked than might be expected from the overall case filing statistics. Indeed, racial data on these two populations

a variety of useful information on such issues as annual revocation rates.

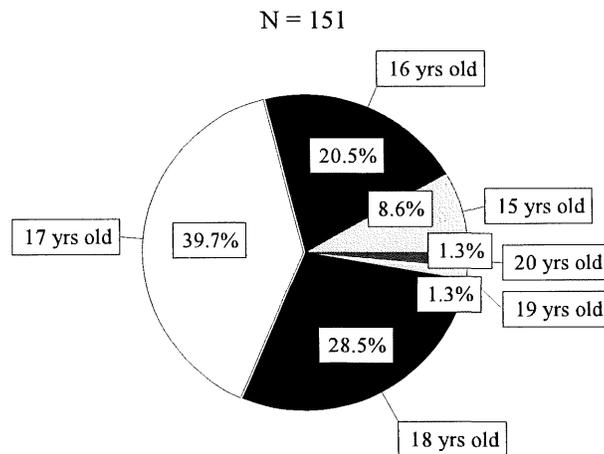
¹⁰ Minnesota Supreme Court report, note 2, *supra*, table 17.

¹¹ See discussion of data comparability issues in note 8, *supra*.

are more comparable to racial data collected by the Supreme Court on certified juveniles than they are to data on EJJ offenders generally.¹²

Age at time of EJJ conviction. The Institute collected information on how old the revoked EJJ offenders were at the time they were convicted of their EJJ offense. Age at the time of conviction was chosen instead of age at the time of the EJJ offense because it was felt that this date gives a more realistic picture of the amount of time actually available to the juvenile court to attempt to rehabilitate the offender through the juvenile EJJ dispositions.¹³ As Chart 2 shows, none of the revoked offenders in this research study was under the age of 15 at the time of conviction and 60 percent of them were either 16 or 17 years old by that date. Interestingly, almost one-third of the revoked offenders were 18 years old or older at the time of EJJ conviction, raising the issue of whether their relatively older age was an important factor in the court’s decision not to retain them in the normal delinquency track and, instead, to take advantage of the extra two years of jurisdiction provided by the EJJ law.

Chart 2: Age at EJJ Conviction



Geographic location. Information also was collected on the county and judicial district where the EJJ status of these offenders was revoked. In most cases, this location was also the place where the offender originally had been designated and convicted as an EJJ; however, in a handful of cases the revocation was handled by a different court, usually as a means of

¹² Minnesota Supreme Court report, note 2, *supra*, table 16.

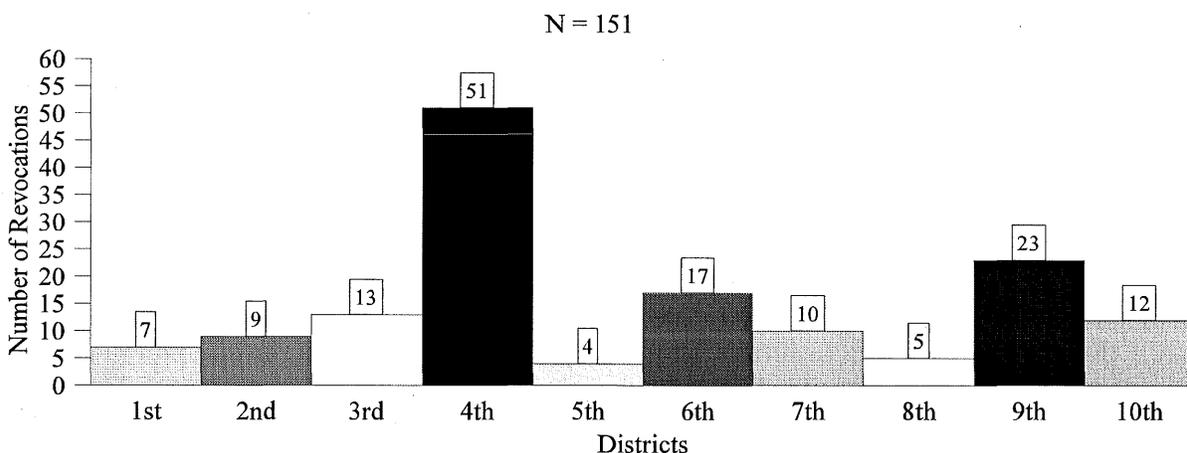
¹³ A reading of the case files revealed that it was not uncommon for many months to elapse between the time of the offense and the date of the EJJ conviction. Many cases required the preparation of an extensive study to determine whether the juvenile should be certified as an adult, designated an EJJ, or handled in the normal delinquency track. This background study required an investigation of the juvenile’s offense history, treatment or social services history and educational background and generally focused on the juvenile’s amenability to further treatment within the juvenile justice system.

combining the revocation proceeding with a new criminal case arising in the revoking jurisdiction.

The revocations in this study took place in 38 of the 87 counties in Minnesota and in all ten of its judicial districts. Approximately one-half of the revocations occurred in the seven-county metropolitan area and one-half occurred in Greater Minnesota.

Chart 3 displays the geographic location of the revocations by judicial district.¹⁴ As expected, the greatest number of revocations occurred in the Fourth Judicial District (Hennepin County), the state’s largest district. However, the Second Judicial District (Ramsey County) had a relatively small number of revocations in the study’s two-year time period; a result that is not consistent with other EJJ research studies conducted in prior years and which, therefore, may be anomalous.¹⁵ One finding that is consistent with prior research studies is the relatively high number of revocations occurring in the Ninth Judicial District in northwestern Minnesota, a fairly low population region. According to the Minnesota Supreme Court’s statistics, the Ninth Judicial District disposed of more cases as EJJ from 1995 to 1998 than any other district besides the Fourth Judicial District.¹⁶ Given these data, it should not be surprising that the Ninth Judicial District also had the second highest number of revocations in 1999 and 2000.

Chart 3: Location by Judicial District



¹⁴ The data are presented by judicial district rather than by county because certain counties had a very small number of cases and the Institute did not want to inadvertently identify specific juveniles in the report (*i.e.* by providing information on a single case in a given county) in violation of state data privacy laws and the requirements of the Minnesota Supreme Court order authorizing the collection of data for this study.

¹⁵ See *e.g.* Institute on Criminal Justice. *Serious and Chronic Juvenile Offenders*. p. 24 (December, 2000) (reporting the number of EJJ revocations per year in the Second Judicial District from 1995 to 1999).

¹⁶ Minnesota Supreme Court report, note 2, *supra*, table 6.

OFFENSE AND OFFENSE HISTORY CHARACTERISTICS

This section discusses the types of offenses for which the revoked EJJ offenders originally were designated EJJ as well as the offense histories they had prior to the filing of the EJJ case. It also describes, from a procedural standpoint, how the juvenile came to be designated as an EJJ.

Avenue to EJJ designation. A close examination of the case files of the 151 revoked EJJ offenders reveals that the vast majority of the offenders (88.7 percent) were designated EJJ after waiving either a certification hearing or an EJJ designation hearing and pleading guilty to one or more of the offenses charged in the petition or to a lesser-included offense.¹⁷ While it would be sheer conjecture to draw any detailed conclusions from this high guilty plea rate, it is similar to the guilty plea rate in other criminal and juvenile justice proceedings¹⁸ and can probably be attributed to a number of factors, including the prosecutor's inability to prove the grounds for adult court certification and/or the juvenile's acceptance of a plea negotiation that allowed postponement if not avoidance of adult court sanctions. Nevertheless, it is interesting to note that even though the EJJ law provides numerous formal avenues to EJJ designation (such as failed adult court certification, prosecutor designation, and court designation following a hearing), in practice the avenue most heavily traveled appears to be the informal one of negotiated pleas.

EJJ offenses. Most of the revoked EJJ offenders in this study (66 percent) were convicted of only one offense at EJJ conviction, although many of them originally had been charged with additional counts which the prosecutor dismissed, apparently as part of a negotiated plea. Almost one-quarter of the offenders were convicted of two offenses and the remaining ten percent were convicted of three or more offenses.

In order to simplify the analysis of the nature and severity of these EJJ conviction offenses, only the most serious offense was analyzed in those cases where the offender was convicted of more than one offense.¹⁹ These "most serious" offenses then were grouped by different variables such

¹⁷ The remaining avenues to EJJ designation for these offenders were failed adult court certification (2.6 percent), prosecutor designation (4.6 percent) and court designation after an EJJ hearing (4 percent).

¹⁸ For example, the reported guilty plea rate in felony cases in state courts nationally is 91 percent. U. S. Department of Justice. Bureau of Justice Statistics. *Sourcebook of Criminal Justice Statistics 2000*. table 5.42. For juvenile felony offenders handled in adult criminal court, the guilty plea rate reportedly is 80 percent. U.S. Department of Justice. Bureau of Justice Statistics. *Juvenile Felony Defendants in Criminal Courts*. table 8 (September 1998).

¹⁹ Offense severity was determined by the severity level in which the offense was classified under the Minnesota sentencing guidelines. If the offense was a presumptive prison offense because of a statutory mandatory minimum sentence, its presumptive prison designation superseded any other non-presumptive offense for which the offender may have been convicted.

as the name of the offense, whether it was a person, property, or public order²⁰ offense and whether it was a presumptive prison²¹ or presumptive probation offense.

One surprising fact that emerged from examining the case files is that there were a small number of juveniles who were convicted as EJJ for a nonfelony-level crime.²² Closer examination of the case files revealed that these juveniles originally had been charged with a felony-level offense (a prerequisite to EJJ jurisdiction) and, as part of a negotiated plea, had consented to being designated as EJJ while pleading guilty to a lesser crime. Although it is unclear whether the legislature intended such nonfelony-level offenders to be subject to the EJJ law, this result appears to be authorized by Minn. Stat. § 260B.130, subdivision 4, paragraph (b), which provides:

if the extended jurisdiction juvenile proceeding results in a guilty plea for an offense not described in subdivision 1, clause (2),²³ the court may impose ... [an EJJ] ... disposition ... if the child consents.

When the EJJ offenses are organized by name, it becomes clear that the two most common offenses, by far, were second degree assault and aggravated robbery. Together, these two offenses accounted for more than one-third of all EJJ conviction offenses that were analyzed. Moreover, when combined with other degrees of assault and robbery, these offenses accounted for almost 48 percent of all the most serious offenses. The next most common offense was burglary which accounted for over 18 percent of all offenses analyzed. Various types of theft, particularly motor vehicle theft, comprised an additional nine percent. A complete list, by name, of the most serious EJJ conviction offenses contained in the data base is found in Appendix D.

²⁰ Given their relatively small number in this data base, drug offenses were categorized as public order offenses rather than being classified separately. The crime of burglary was classified as a property offense, while robbery and arson were classified as offenses against the person.

²¹ Offenses were classified as presumptive prison offenses if they were classified in severity level VII or greater of the sentencing guidelines or if they were classified as presumptive prison offenses due to a statutory mandatory minimum prison sentence, such as assault in the second degree. The offense history of the offender was not considered.

²² These offenses included fourth degree burglary, disorderly conduct, theft, and fifth degree assault for the benefit of a gang.

²³ *I.e.* an offense that is not a presumptive prison offense or an felony offense involving the use of a firearm.

Chart 4: Type of EJJ Offense

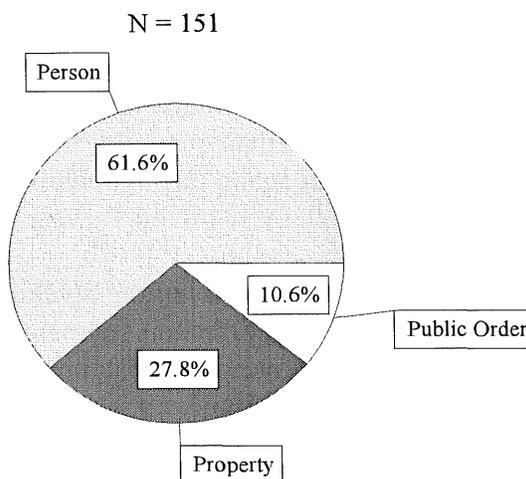


Chart 4 classifies the EJJ offenses by person, property and public order offenses. Clearly, offenses against the person predominate, accounting for almost 62 percent of all offenses analyzed.²⁴ The next largest category consists of property offenses, influenced strongly by the relatively high number of burglary offenses for which these offenders were convicted. The final category, public order offenses, accounts for almost 11 percent of the total. Almost one-half of these public order offenses were drug offenses of various degrees; the remainder consisted mostly of firearms possession and reckless firearm discharge offenses.

The types of offenses for which these revoked EJJ offenders were convicted do not differ dramatically from those with which EJJ offenders in general were charged in 1998. According to the Minnesota Supreme Court's data,²⁵ a slightly higher proportion of EJJ cases involved offenses against persons (65.7 percent) and a slightly lower percentage involved property offenses (22.6 percent) than those in the Institute's study. About the same proportion (11.7 percent) involved public order offenses. Some differences do come to light, however, when one looks at the mix of crimes within these categories. For example, the third most common type of EJJ crime in the Supreme Court's data base in 1998 was criminal sexual conduct (16 percent of the total);²⁶ in contrast, only 6.5 percent of revoked EJJ offenders in the Institute's data base were convicted of a sex offense. Certainly, there may be many explanations for this difference, including different data collection methods and the different time periods studied. However, it also is possible that certain types of offenders, such as sex offenders, had greater success within the EJJ system than other types of offenders and, as a result, were revoked in lower numbers.

²⁴ As noted above, the vast majority of these person offenses consisted of assault and robbery offenses.

²⁵ Minnesota Supreme Court report, note 2, *supra*, table 11

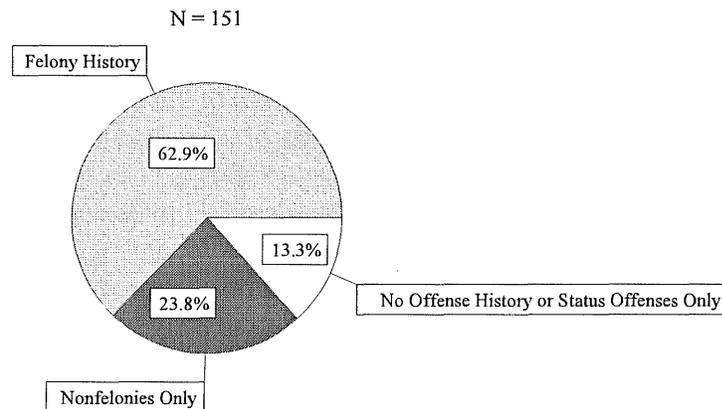
²⁶ Minnesota Supreme Court report, note 2, *supra*, table 13

Further research on the issue of whether certain types of offenders have greater success in the EJJ system and the reasons why might shed more light on this question.

Finally, the Institute also examined the EJJ offenses by classifying them as presumptive prison or presumptive probation offenses.²⁷ More than one-half (53 percent) of EJJ offenses analyzed were presumptive prison offenses, reflecting again, the high numbers of aggravated robbery and second degree assault crimes for which these offenders were convicted.²⁸

Offense histories. The offense histories of the revoked EJJ offenders studied were varied. As Chart 5 shows, the majority of offenders (63 percent) had a prior record of having committed one or more felony-level offenses, either alone or with other nonfelony offenses. Perhaps more interesting is the fact that a significant proportion of the offenders had either no record of prior offenses at the time they were designated EJJ or had a record of only status offenses, such as underage drinking, curfew violations, etc. Together, these two categories account for over 13 percent of the offenders.²⁹

Chart 5: Offense History



²⁷ See note 21 for a discussion of how offenses were classified as presumptive prison or presumptive probation offenses.

²⁸ The importance of an EJJ offense’s classification as a presumptive prison offense will be discussed later in this report in relation to the EJJ law’s requirements concerning revocation of EJJ status when the offender originally was convicted of a presumptive prison offense or a felony involving use of a firearm.

²⁹ The lack of a significant record of delinquency did not necessarily mean that the juvenile was unknown to the juvenile court. A substantial number of the juveniles in this study had an extensive placement history relating to social service or treatment needs.

These data can be explained better when they are analyzed in terms of the severity of the offender's EJJ conviction offense and the age of the offender. For example, 85 percent of the offenders who had no delinquent record or a record only of status offenses were convicted of a presumptive prison-level offense and two-thirds of them were convicted of a severity level VII or XIII offense. These statistics indicate that the seriousness of their EJJ offense was the primary reason why they were under EJJ jurisdiction. Similarly, two-thirds of these offenders were at least 17 years old at the time of their conviction, indicating that their designation as EJJ also was probably influenced by their relatively older age and the amount of time available for juvenile court delinquency jurisdiction to apply.

ELEMENTS OF THE ORIGINAL EJJ SENTENCE

As explained earlier, the EJJ law requires the juvenile court judge to impose a two-part sentence upon conviction: a prison sentence and one or more juvenile court dispositions. The law further provides that the judge must stay execution of the prison sentence on condition that the offender abide by the requirements of the juvenile disposition and not commit any new crimes while on EJJ status.³⁰ Unless EJJ status is revoked earlier, the offender is discharged from EJJ status and juvenile court jurisdiction no later than age 21.³¹

This section of the report examines the types of adult and juvenile sanctions that judges imposed on the offenders in this study at the time of their EJJ conviction.

Stayed prison or jail sentences. All but five of the 151 revoked EJJ offenders in this study received a stayed prison sentence as part of their EJJ sentence. The five offenders who did not receive a stayed prison sentence were sentenced to a stayed jail sentence of 365 days or less. This group of offenders included the handful of juveniles who pleaded guilty to a nonfelony offense and consented to remaining under EJJ jurisdiction. It also included one juvenile who was convicted of motor vehicle theft (a felony) yet received a gross misdemeanor sentence.

The remaining juveniles received stayed prison sentences that ranged from a year and a day to 40 years in duration.³² Chart 6 illustrates the number of offenders who received stayed prison sentences of various lengths. It shows that 23 of them (15.2 percent) received the minimum felony sentence allowable under Minnesota law, a year and a day, and that 104 of them (more than two-thirds) received a stayed prison sentence of between 13 months and four years in length.

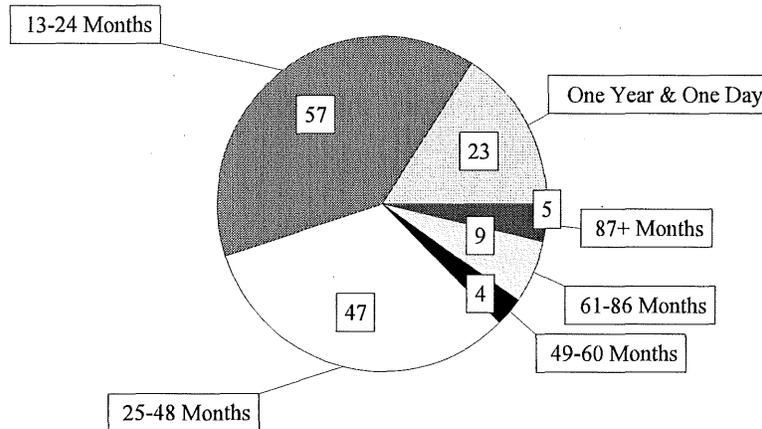
³⁰ See Minn. Stat. § 260B.130, subdivision 4, paragraph (a).

³¹ See Minn. Stat. § 260B.193, subdivision 5, paragraph (b).

³² The juvenile who received the 40 year stayed prison sentence was convicted of two counts of first degree criminal sexual conduct. The judge imposed two consecutive prison sentences (together totaling 40 years) and stayed them as part of the EJJ disposition. The duration of each of these sentences constituted an upward departure from the presumptive sentence. The second longest stayed prison sentence imposed was 159 months (approximately 13 years) for second degree murder.

Chart 6: Length of Stayed Prison Sentence

N = 145 *



* One case file did not indicate the length of the stayed sentence.

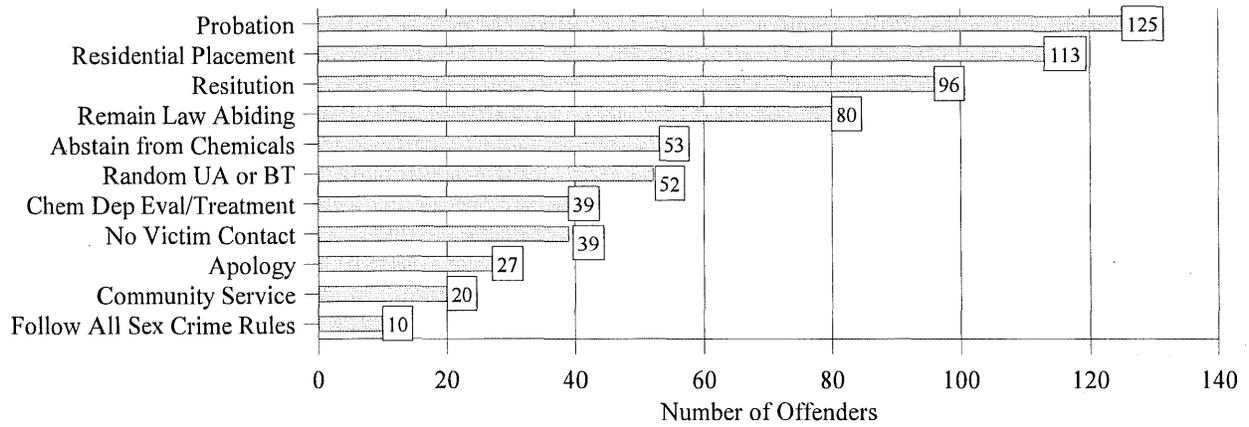
Juvenile dispositions. Most judges around the state imposed more than one juvenile disposition on the EJJ offenders in this study. Virtually all of them (83 percent) were placed on supervised probation, although this disposition was not made explicit in every case. Perhaps more important, 113 of the offenders (75 percent) were placed in some type of residential facility, either a juvenile correctional facility or a treatment facility for chemical dependency or mental illness. Most of these placements were in local facilities; however, a significant number of offenders were placed in an out-of-state facility in a neighboring state or elsewhere. A relatively small number of offenders were placed in a state-level juvenile facility. Usually, the judge specified the particular facility where the offender would be placed based on recommendations made by the local community corrections agency.

The remaining juvenile dispositions imposed as part of the EJJ sentence were fairly standard and included requirements that the juvenile abstain from alcohol or controlled substances, submit to random drug and alcohol testing, be evaluated and, if warranted, treated for chemical dependency, pay restitution, perform community service, have no contact with the victim or with accomplices, remain law-abiding, apologize to the victim, and (for sex offenders) follow sex offender release rules (i.e. register as a sex offender, submit to sex offender treatment

assessment, etc.). Additionally, those offenders who were placed on supervised probation were required to follow any additional conditions imposed by the probation agent. These conditions included such requirements as meeting with the probation officer routinely, pursuing education or employment, observing curfew and not leaving the state without permission.

Chart 7 shows the number of offenders who received each of the court-ordered dispositions outlined above. Most offenders received more than one disposition.

Chart 7: Juvenile Dispositions



REVOCATION OF EJJ STATUS

The case files that were examined during the course of this study contained a wealth of information about the circumstances under which the EJJ status of these offenders was revoked, the reason or reasons why the revocation occurred and the outcome of the revocation. The data collected from the case files on these topics are described in this section. These data are supplemented by the responses received from the judges who made these revocation decisions and who responded to the survey sent to them by the Institute in October, 2001.

Time spent on EJJ status prior to revocation. Some of the offenders whose EJJ status was revoked in 1999 or 2000 spent quite a long time under EJJ supervision before revocation and others were revoked fairly quickly. The average length of time between conviction and revocation was 20 months. Approximately 20 percent of the offenders were revoked within a year of their EJJ conviction and over 60 percent were revoked within two years of the conviction. Only five percent of offenders were revoked after three years had elapsed since conviction, indicating either that most EJJ offenders had aged out of EJJ jurisdiction by that time or that offenders who are likely to fail tend to do so within the first two to three years of supervision.

Revocation reasons articulated in the case files. Under the EJJ law, an offender's EJJ status may be revoked either for violating a condition of the juvenile disposition, for allegedly committing a new crime, or for both reasons.³³ A review of the case files in this study revealed that it is common practice for courts to treat new crimes committed while under EJJ supervision as "probation violations," under the theory that the offender failed to remain law-abiding while on probation. For this reason, even though the case file may indicate that the offender's EJJ status was revoked due to a violation of probation, often the revocation occurred because the offender had committed a new crime in violation of the conditions of probation. In collecting information from the case files on this issue, therefore, the Institute distinguished between violations of probation that were based on new criminal activity and those that were not. Where the term "violation of probation" is used in the analysis below, it includes only those probation violations that did not involve new criminal activity. The term "new crime" includes all new criminal activity committed on EJJ status which forms the basis of a revocation, regardless of whether it is denominated a new crime or a probation violation in the case file.³⁴

³³ Minn. Stat. § 260B.130, subdivision 5.

³⁴ A separate policy question is raised by the juvenile justice system's practice of handling new crimes in the context of a probation revocation proceeding instead of in a new criminal or juvenile court proceeding. Legal commentators have argued that this practice creates an unfair "procedural back door" into adult court because revocation proceedings contain lower standards and less due process than do adjudicatory proceedings. See Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform*, 79 Minn. L. Rev. 965, 1050 (1995). This important policy issue relates to both the criminal justice and the juvenile justice systems and is outside the scope of this report.

Chart 8 shows the general reasons why the EJJ status of the offenders in this study was revoked.³⁵ It demonstrates that in about one-half of the cases, EJJ status was revoked because the offender committed a new crime or committed both a new crime and a separate probation violation. In the remaining one-half of the cases, EJJ status was revoked solely because the offender committed one or more probation violations, none of which involved new criminal activity.

Chart 8: Reason for Revocation

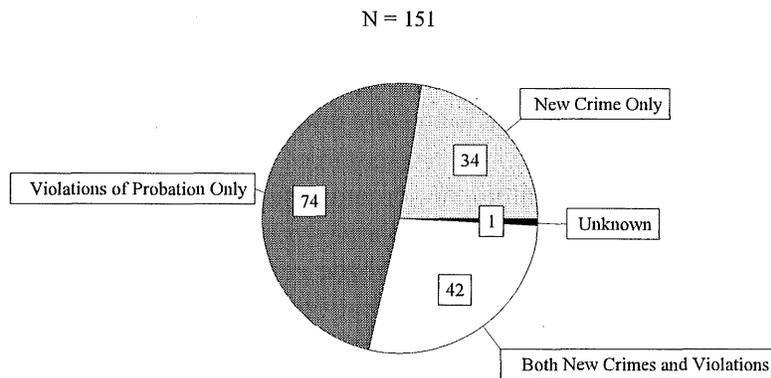
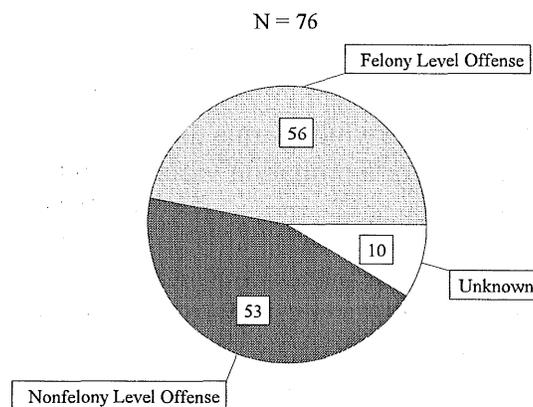


Chart 9 provides more detailed analysis of the types of new crimes that resulted in revocation of EJJ status. Concerning the 76 offenders whose revocation was based, in whole or in part, on a new crime, the Institute recorded information on 119 separate new crimes. Chart 9 breaks down these new crimes by whether they were a felony or non-felony offense and shows an almost equal distribution between the two levels of offense.

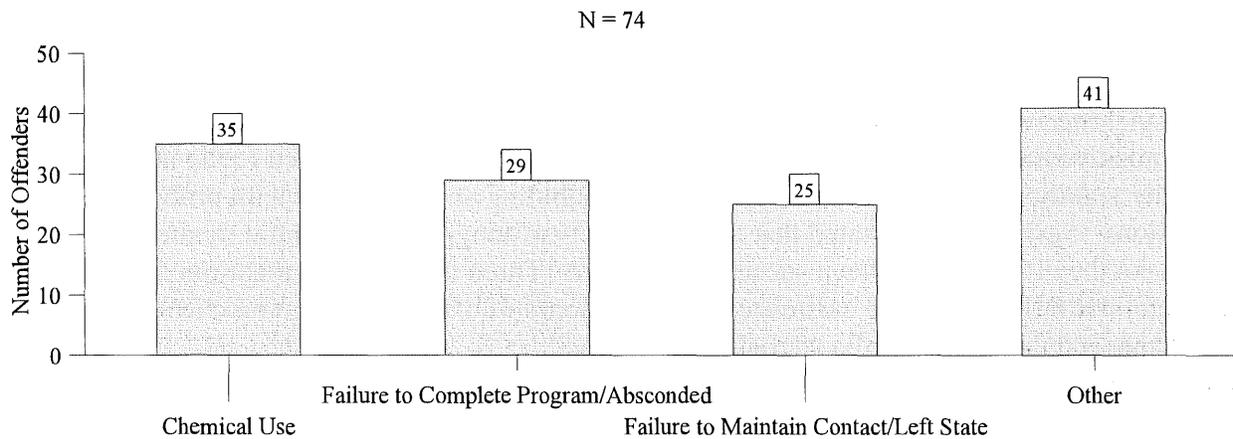
Chart 9: Types of Revocation Offenses



³⁵ These data are based on 150 offenders rather than on 151 offenders because one case file did not specify the reason why EJJ status was revoked.

The Institute also recorded information on the probation violations committed by the 74 offenders whose EJJ status was revoked solely due to a violation of probation. Most of these offenders committed only one violation of probation. The largest single category of violation was chemical use, followed by failure to maintain contact with the probation officer, and failure to complete a program and/or absconding from placement. The remaining violations consisted of a variety of other types of probation violations, such as continuing gang involvement, failing to live at home, failing to pay restitution or to complete community service, failing to stay in school or to remain employed, and failing to abide by program rules.

Chart 10: Violations Which Led to Revocation



Although the preceding charts illustrate the reason or reasons why EJJ status was revoked, they do not show whether and to what extent a particular offender had ongoing problems abiding by the EJJ juvenile disposition in the months or years prior to the final revocation hearing. While data were not collected systematically on this issue, the Institute’s case file review indicates that many of the revoked EJJ offenders in this study (particularly those experiencing ongoing chemical use problems or having trouble in their residential placements) were given more than one opportunity to correct their behavior before their EJJ status was revoked. Sometimes, a revocation hearing was held and the judge adjusted the juvenile disposition, often by changing the offender’s residential placement. More often, a probation officer reported a problem to the judge by letter and adjusted the terms of probation on his or her own. In either event, the case files showed that it was rare for an offender’s EJJ status to be revoked based solely on a single event or misstep, unless the behavior involved serious unlawful behavior.

Revocation reasons given in judges' survey. The survey the Institute sent to the 71 judges who revoked an offender's EJJ status in 1999 or 2000, asked the judges what types of factors contributed to their decision to revoke an EJJ sentence. Of the 29 judges who responded to the survey, most of them stated that the commission of a serious new offense, particularly one that involved violence or was similar to the EJJ conviction offense, was the most important factor. A majority also responded that they were influenced by serious or repeated violations of probation which indicated that the offender was unamenable to change. Also mentioned were the following factors: the offender's age, prior record, failure or refusal to complete programming, unwillingness or inability to deal with ongoing chemical dependency problems, the progress or lack of progress toward rehabilitation to date, and the availability of additional treatment options not already tried. Several judges also stated that their decision to revoke was influenced strongly by the probation officer's recommendation.

The Institute's survey also asked the judges what characteristics, if any, distinguished the EJJ offenders who "failed" (*i.e.* were revoked) from those who succeeded. A number of judges stated that the availability of a stable and supportive family situation and of positive role models and a positive peer group were strong predictors of success. Others pointed to the individual offender's ability and determination to remain law-abiding and to comply with probation conditions. Several judges stated that the availability of long-term residential treatment programs can make the difference between success and failure. Three factors often mentioned as predictors of failure were the existence of a prior record of offending, ongoing chemical use problems, and the presence of a "defiant personality."

SENTENCING DECISIONS MADE AFTER REVOCATION OF EJJ STATUS

The case files also were a rich source of information on the sentencing decisions made by judges following revocation of EJJ status. This section focuses in detail on these sentencing decisions. First, it examines whether or not the prison or jail³⁶ sentence imposed as part of the original EJJ sentence was executed and discusses some of the reasons given by judges who responded to the Institute's survey regarding why they chose to execute or stay the sentence. Second, in order to better understand the sentencing outcomes, it compares, from a number of perspectives, offenders whose prison sentences were executed with those whose prison sentences were stayed. To the degree possible, it also analyzes these adult sentences in terms of their upward or downward departure from presumptive sentences under the sentencing guidelines and discusses some of the reasons for these departures, as articulated by the sentencing judges. Finally, this section describes and analyzes the various types of adult sanctions, including jail time, that the sentencing judges imposed on those offenders who were not sentenced to prison.

Decision whether to execute prison sentence. The judges who revoked the EJJ status of offenders in this study ordered execution of the prison or jail sentence in 75 (49.7 percent) of the 151 cases and continued the stay of sentence in the remaining 76 (50.3 percent) cases. Somewhat similar rates of sentence execution have been reported in other, previous research studies, even though the other studies have all focused on different time frames. For example, the Minnesota Supreme Court has reported that revoked EJJ offenders were sentenced to prison in 56 percent of the cases statewide in 1997 and 1998, a somewhat higher rate than the Institute found in its study of 1999 - 2000 revocations.³⁷ Other studies have found a lower prison commitment rate. In Ramsey County, for example, 43 percent of revoked EJJ offenders reportedly went to prison during the time period from January 1995 to May 2000, while in Hennepin County, 49 percent of revoked EJJ offenders reportedly were sent to prison in 1995 to 1997.³⁸ Nevertheless, despite some variation from study to study, it appears that approximately one-half of revoked EJJ offenders tend to receive executed prison sentences.

The survey the Institute sent to the judges who revoked EJJ offenders in 1999 or 2000 asked them what factors influenced their decision to execute or stay the offender's adult sentence. Many of their sentencing reasons were similar to their revocation reasons. Several of those who responded said that their decision to execute sentence was influenced by the severity or number

³⁶ As mentioned earlier in this report, five offenders in this study received a nonfelony-level adult sentence as part of the original EJJ conviction. Four of these offenders were sentenced to a stayed jail term of 365 days and one offender received a stayed 90-day sentence.

³⁷ This difference may be due to the case-based, rather than offender-based data methodology used by the Supreme Court.

³⁸ See research studies cited in note 2, *supra*.

of new offenses committed and by whether these new offenses were similar to the original EJJ conviction offense or involved violence, sophisticated planning, or a threat to public safety. The respondents also mentioned a number of factors indicating the offender's unamenability to treatment, such as unsuccessful discharge from programming, repeated violations of probation, uncontrolled chemical dependency, the offender's poor attitude, and his or her lack of progress toward establishing a stable life style. Several judges stated that they were influenced by the defendant's request for an executed sentence and/or the probation officer's recommendation to execute the sentence. One judge executed the sentence in order to make available to the offender new, yet untried programming in the adult probation system. Another judge stated a desire to make a sentencing decision that was consistent with decisions made in other EJJ cases.³⁹

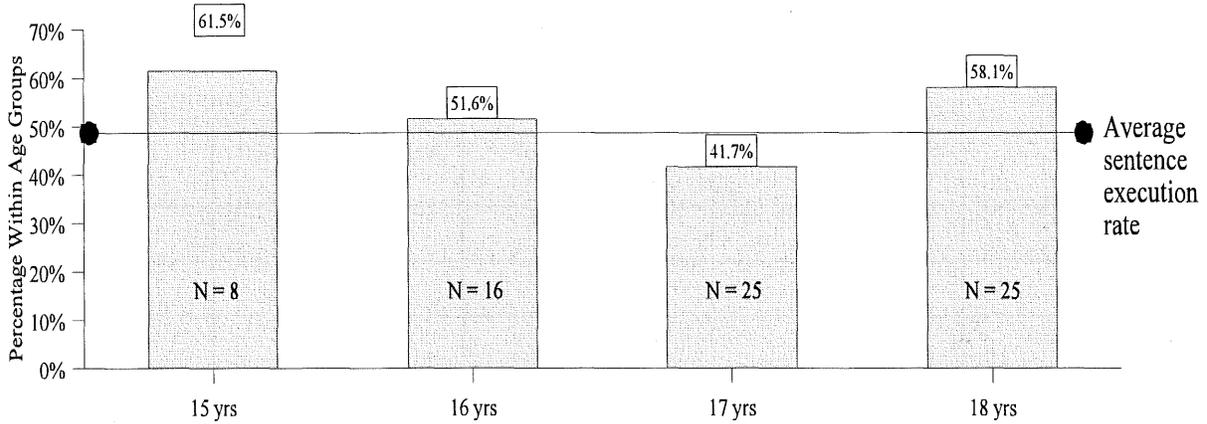
The reasons articulated in the survey responses for deciding to stay execution of sentence were, in many ways, the mirror images of the reasons for executing sentence. Judges were influenced to stay execution if the probation officer recommended a stay, if the offender had not committed a new serious or violent offense or repeated violations of probation, or if the new offense was unrelated to the EJJ conviction offense. They also expressed a desire to stay execution if the offender was relatively young or immature, if less severe and, as yet, untried consequences were available, or if the defendant had made some efforts toward rehabilitation or creating a more stable life style.

Quantitative comparison of offenders who received executed and stayed sentences. The Institute compared offenders who received executed sentences with those who received stayed sentences with respect to the following variables: age at time of EJJ conviction, race or ethnicity, geographic location, the type and severity of their original EJJ offense, their offense history, and the reason why their EJJ status was revoked. The Institute's analyses in most cases were bivariate rather than multivariate. Because these bivariate analyses do not control for the independent effects of each separate variable, their results should be viewed with caution.

- **Age at time of EJJ conviction.** As Chart 11 illustrates, no strong pattern emerges when one examines the age of the offenders at the time of conviction in relation to whether or not their sentence was executed upon revocation. Although the offenders who were 18 years old at the time of conviction were more likely than most other age groups to receive an executed sentence, those offenders who were 17 years old at conviction were less likely to receive an executed sentence than was the average offender. Moreover, the youngest group of offenders (those who were 15 years old at the time of conviction) had a higher sentence execution rate than other age groups. The size of this rate difference may be affected by the small number of offenders within this age group (8).

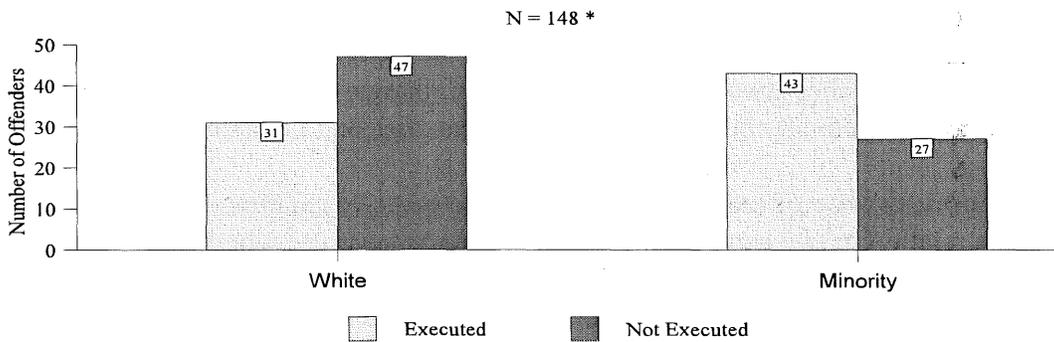
³⁹ It should be noted that, in a handful of cases, the sentence was executed because the EJJ offender demanded execution of sentence in lieu of probation. The right to demand execution of sentence when the conditions of probation are more onerous than a prison term is based on *State v. Randolph*, 316 N.W.2d 508 (Minn. 1982). Additionally, in a few cases, the record indicated that the executed sentence was ordered because it was agreed to by the parties (*i.e.* prosecutor, the probation officer and the offender).

Chart 11: Sentence Execution Rate Within Age Groups



- Race or ethnicity of offenders.** Detailed analysis of sentence execution rates by racial or ethnic group was not attempted, due to the small numbers of offenders within certain groups.⁴⁰ However, in Chart 12, the Institute did compare the executed sentences of the white offenders with those who were members of minority racial or ethnic groups and found that white offenders were less likely, on average, to receive an executed sentence than were minority group offenders.

Chart 12: Sentence Execution by Race/Ethnicity



* In three cases, the juvenile's race or ethnicity was unknown and therefore these cases are not included.

⁴⁰ The study's population included only five EJJ offenders of Asian American heritage and only nine offenders of Hispanic heritage. Subjecting such small groups of offenders to statistical analysis would not have produced useful or reliable data. Moreover, the Institute has tried to be careful, throughout this study, to avoid any kind of detailed analysis that might permit the identification of specific individuals in violation of data privacy laws and the parameters of the Minnesota Supreme court order that authorized the collection of data for this study.

Chart 13: Sentence Execution by Type of Crime and Race/Ethnicity

	White		Minority	
	Sentence Executed	Sentence Not Executed	Sentence Executed	Sentence Not Executed
Person	20	22	28	22
Property	11	20	6	4
Public Order	0	5	9	1

The race of three juveniles was unknown.

When the type of offense committed by the offender is factored into the analysis, the data show that the overall higher sentence execution rate experienced by minority group offenders exists in all offense categories - person, property and public order - and cannot be attributed to any difference in the type of the offenses committed by white offenders versus minority group members. Although this analysis does not control for other variables that may be affecting sentence execution rates, the above statistics do lend support to findings of racial/ethnic disparity in the justice system that have been documented in other studies.⁴¹

- **Geographic location.** When the data on sentence execution rates are examined in relation to whether the revocation occurred in a metropolitan county or in a county in Greater Minnesota, it appears that geographic location had no effect on the likelihood of sentence execution. As was discussed earlier, the cases in this study were divided almost evenly between these two geographic areas and, likewise, executed sentences were divided almost equally between the metropolitan area and Greater Minnesota.
- **Type and severity of conviction offense.** The Institute examined the sentence execution rate in relation to two separate measures of offense severity: whether the offense was a person, property, or public order offense and whether the offense was classified as a presumptive prison offense under the sentencing guidelines. Chart 14 shows the results of the first analysis. It illustrates that, while the execution rate for person offenses is approximately 53 percent,⁴² the rate for property offenses is significantly lower

⁴¹ See e.g. Cole, David. *No Equal Justice: Race and Class in the American Criminal Justice System*. The New Press, New York (1999); Feld, Barry C. *Bad Kids: Race and the Transformation of the Juvenile Court*. Oxford University Press, New York and Oxford (1999).

⁴² This execution rate is close to the average for the entire population of offenses; however, offenses against the person account for over 60 percent of this population's offenses and, as a result, the execution rate for

(40 percent) than the average (50 percent) and, interestingly, the execution rate for public order offenses (56 percent) is noticeably higher than the average.

Chart 14: Sentence Execution by EJJ Offense Type

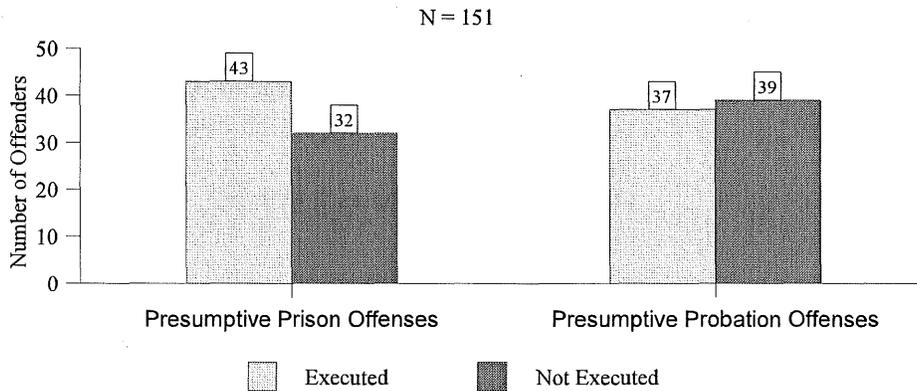


Chart 15 shows the results of analyzing sentence execution by whether or not the conviction offense was a presumptive prison offense. As expected, the number of sentence executions was higher for presumptive prison offenses than for non-presumptive prison offenses, but the difference between the two was not as dramatic as one might expect, given the strong directive in the EJJ law that, upon revocation, the judge must execute the prison sentence of those offenders convicted of presumptive prison offenses or articulate mitigating reasons, on the record, why the sentence should not be executed.⁴³ Further analysis of these offenses by severity level provided additional interesting information: the sentence execution rate for offenders convicted of second degree assault (presumptive prison offenses classified at severity level VI) was higher (62 percent) than the rates for offenders convicted of offenses at either severity level VII (51 percent) or VIII (56 percent).

this category of offenses strongly influences the average.

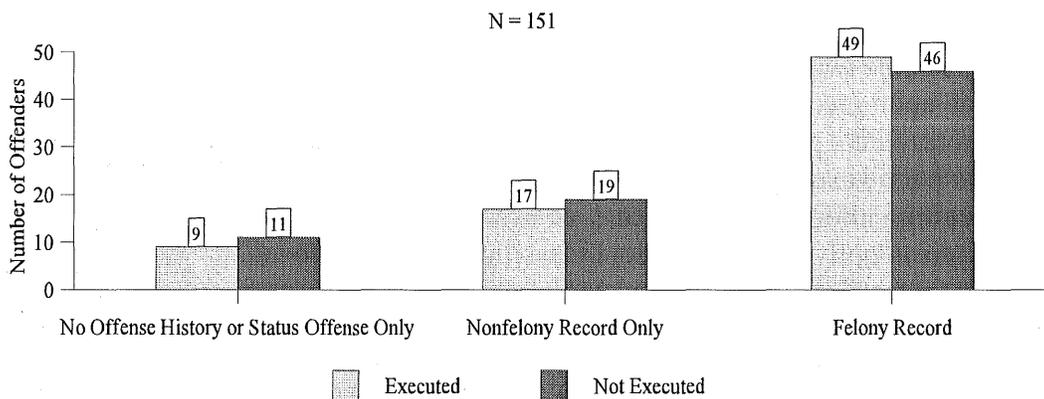
⁴³ Minn. Stat. § 260B.130, subdivision 5.

Chart 15: Sentence Execution by Offense Type



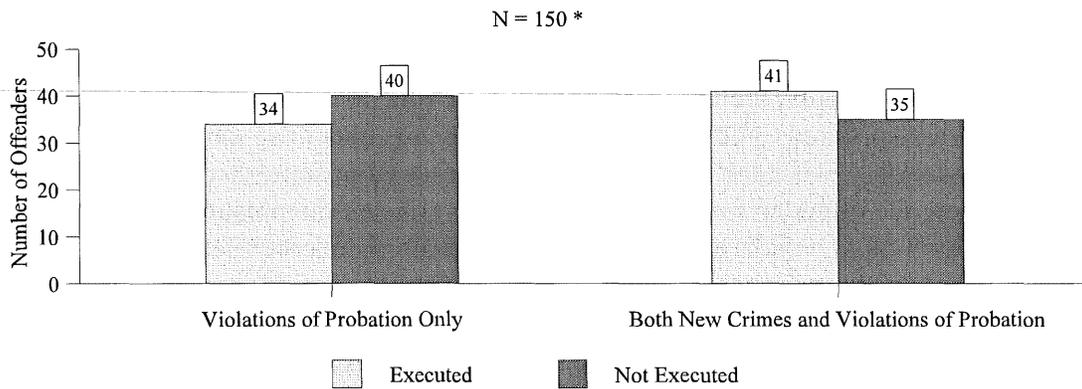
- Offense history.** Analysis of executed sentences in terms of the nature of the offender’s offense history did not yield any surprising results. As Chart 16 demonstrates, offenders who had no criminal record or a record of status offenses only were the least likely group to receive an executed sentence even though more than one-half of them were convicted of a presumptive prison offense. The offenders who had a record of only nonfelony offenses were somewhat more likely to receive an executed sentence than those who had no record but not as likely as those offenders who had a prior felony record.

Chart 16: Sentence Execution by Offense History



- Reason for revocation of EJJ status.** Finally, the Institute examined executed sentences in relation to the reason why the offender’s EJJ status was revoked. As Chart 17 shows, offenders whose EJJ status was revoked for committing a new crime were more likely to receive an executed sentence than offenders whose EJJ status was revoked solely for committing a noncriminal violation of probation.

Chart 17: Sentence Execution by Reason for Revocation



* One case file did not indicate the reason for revocation.

The Institute also analyzed executed sentences in relation to the type and severity of the crime that led to revocation of EJJ status, where applicable. In order to make this analysis more meaningful, the Institute factored in the type and severity of the offender’s original EJJ conviction offense. As Chart 18 shows, this multivariate analysis seems to show that the judges were strongly influenced by the degree to which serious offenders (i.e. those committing crimes against persons) continued to be involved in

Chart 18: EJJ Conviction Type by Type of Revocation Crime

N = 69 *

Type of crime at EJJ conviction	New Crime Felonies		New Crime Non-Felonies	
	Sentence Executed	Sentence Not Execute	Sentence Executed	Sentence Not Execute
Person Crime	19	6	9	8
Property Crime	5	5	2	10
Public Order Crime	3	0	0	2

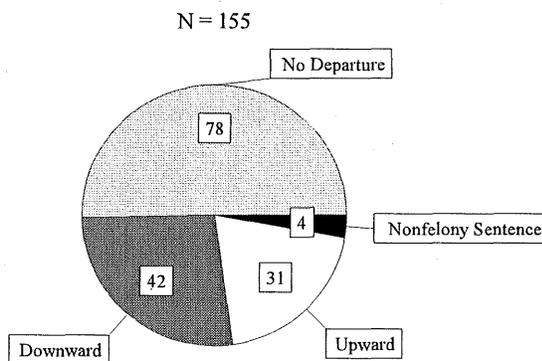
* Five EJJ cases did not indicate the level of crime at revocation.

serious criminal activity, despite the intervention of the EJJ system. Most of the person offenders who committed a felony-level crime at the time of revocation received an executed sentence. In contrast, very few of the property offenders who committed a nonfelony-level crime at the time of revocation received an executed sentence.

Analysis of sentencing departures. The Institute attempted to determine, wherever possible, whether the adult sentence ultimately imposed on the revoked EJJ offenders was an upward or downward departure from the presumptive sentence for the offense under the sentencing guidelines. At times, this fact could be determined directly from the case file based on either the judge’s comments at sentencing or by the presence of a sentencing guidelines worksheet. More commonly, the Institute had to derive this fact by comparing the sentence imposed with what appeared to be the presumptive sentence under the sentencing guidelines at the time of conviction. This latter analysis may have resulted in some erroneous judgments, particularly where the offender’s offense history subtly affected the presumptive sentence’s disposition or duration. Overall, however, the information in the case files usually was sufficiently clear to permit a reliable decision on sentencing departure to be made.

Chart 19 presents detailed information on the sentencing departures received by the revoked offenders.⁴⁴ It shows that, in approximately one-half of the cases, no sentencing departure was ordered by the judge. More than one-quarter of the offenders received a downward dispositional departure and approximately one-fifth received an upward departure. Four offenders received both a dispositional and a durational departure.⁴⁵

Chart 19: Sentencing Departures



⁴⁴ It should be noted that the chart includes the offenders who were convicted of nonfelony-level offenses and also counts, separately, double departures (i.e. a downward dispositional departure, coupled with an upward durational departure).

⁴⁵ Two of these four offenders received both a downward durational and a downward dispositional departure. One offender received an upward departure as to both disposition and duration. The remaining offender received a “mixed” departure: a downward disposition departure and an upward durational departure.

The Institute also looked at sentencing departures in relation to the offender's offense history and found that the vast majority of offenders with no offense history or a record of only status offenses received no departure or a downward departure and, in fact, were more likely to receive a downward departure than no departure. Likewise, most offenders who had a nonfelony record received either no departure or a downward departure, but the proportion receiving a downward departure was much smaller. Finally, offenders who had a felony record accounted for most of the upward departures and more of them received upward departures than downward departures.

Mitigating reasons given for decision not to execute a presumptive prison sentence. Minnesota Statutes, section 260B.130, subdivision 5 requires that when a judge revokes EJJ status of an offender who was originally convicted of a presumptive prison offense or a felony offense involving use of a firearm, the judge must order execution of the previously-stayed prison sentence unless he or she makes written findings regarding the mitigating factors that justify continuing the stay. The Institute examined the case files of the revoked EJJ offenders within this study to determine what types of mitigating factors were articulated in these cases.⁴⁶ The most common mitigating factor was that the offender appeared to be amenable to adult probation, given his or her earlier progress on juvenile probation. This factor often was coupled with other factors such as the offender's continuing need for chemical dependency treatment - a need that the prison system was unlikely to address adequately. Judges also were influenced to stay the prison sentence when the behavior causing revocation of EJJ status involved "breaking rules, not laws" or otherwise did not involve violence or create a public safety risk. Finally, a number of judges departed downward because the terms of the adult sentence had been negotiated or otherwise agreed to by the parties (prosecutor, probation officer and offender).

Types of adult sanctions imposed on offenders not committed to prison. The Institute's review of the case files showed that, in all but nine of the 151 cases (94 percent of the total), the offenders received either prison or jail time. Seventy offenders received prison terms as part of their executed sentence and five additional offenders who were convicted or sentenced to nonfelony offenses received executed jail terms. Of the remaining 76 offenders sentenced to stayed prison sentences, 67 of them received jail time as a condition of probation.

Although there was information on the length of jail time ordered in almost all of the case files, the amount of credit for time spent in prior confinement was not recorded consistently. In some cases, this credit was deducted from the amount of jail time ordered at the front end; in other cases, it was not. In yet a third category of cases, the judge simply ordered the custodial authority to calculate and deduct the appropriate amount of credit due to the offender.

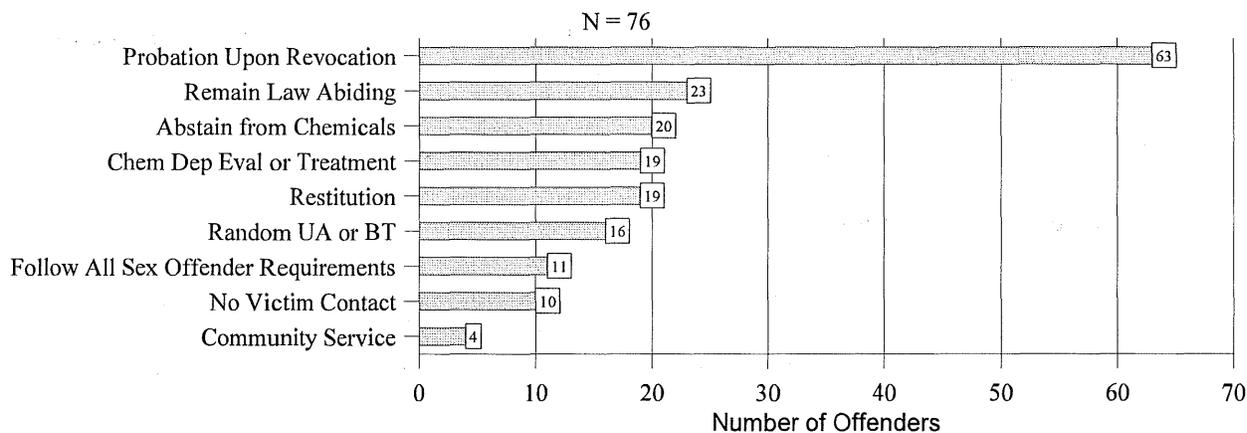
Keeping these data inconsistencies in mind, it can be noted that the EJJ offenders in this study

⁴⁶ It was not possible for the Institute to reliably determine to what extent the judges are complying with the statute's requirement to provide written findings on mitigating reasons in these cases because many case files did not include a written transcript of the EJJ revocation hearing - the document in which written mitigating reasons are usually placed.

were ordered to serve an average of 188 days in jail as either a condition of probation or as part of an executed jail sentence. This average includes a deduction for prior confinement credit where the judge deducted that credit at the time of sentencing.

The judges in this study also imposed a host of other sanctions and requirements on the offenders whose prison sentences were stayed. Chart 20 displays these sanctions and the number of offenders who were ordered to comply with them as a condition of their stayed sentence. It shows that most offenders were placed on probation, usually for the length of their stayed prison sentence though sometimes for a longer time. However, except for the fact that most offenders also were sentenced to time in jail, the data show that only a minority of offenders were ordered by the court to comply with any other specific conditions of probation, such as submitting to a chemical abuse evaluation or treatment, abstaining from chemicals, paying restitution⁴⁷ and so on. This contrasts dramatically with the vast array of probationary-type dispositions imposed on these offenders in the juvenile portion of their original EJJ sentence, where most offenders were required to abide by numerous supervisory and treatment-oriented dispositions.⁴⁸

Chart 20: Noncustodial Adult Sanctions



There are many possible explanations for the absence of these non-custodial court-ordered conditions of probation. The most plausible one, from a common sense standpoint, is that by the time the judge had reached the revocation stage of these cases, he or she had attempted many treatment and rehabilitative-oriented measures and had no more options to try. The only new options, short of prison, were jail and adult probationary supervision. Thus, it makes sense to assume that the judges believed that their primary function, at this stage, was to order jail time and adult probation supervision and that it was more appropriate to leave other types of

⁴⁷ In many cases, restitution obligations already had been satisfied under the juvenile disposition.

⁴⁸ See discussion of EJJ dispositions on page 27, *supra*.

supervision decisions to the discretion of the adult probation department.

EJJ offenders who “failed” on adult probation. As reported above, there were 76 offenders in the Institute’s study whose stayed prison sentence was not executed upon revocation and who, instead, were ordered to comply with various conditions, including probation and probationary jail time. The Institute followed up on these offenders to learn whether any of them were imprisoned later due to a revocation of adult probation or commission of a new felony offense. According to Department of Corrections records, as of December 2001, 20 of these 76 offenders were sentenced to state prison after their EJJ status was revoked. Of this number, it appears from the available records that 13 offenders were sent to prison on their original EJJ offense following revocation of adult probation and seven were imprisoned for an entirely new offense.

Improvements to EJJ law suggested by the surveyed judges. The survey the Institute sent to the revoking judges asked them for any suggestions they might have to improve the law. Several judges who responded to the Institute’s survey recommended that the law be improved by strengthening services for these “at risk” offenders. Among these suggestions were the following:

- make more services available to help older offenders achieve a stable lifestyle, such as independent living arrangements
- provide funding for more educational and training opportunities
- provide funding for more intensive probation supervision
- establish and fund a secure chemical dependency program for female offenders
- locate and fund a cognitive behavioral program for serious offenders in Greater Minnesota and
- establish and fund a short-term detention facility to sanction lesser violations without revoking EJJ status.

One judge also noted disagreement with the EJJ law’s requirement that, upon revocation, the prison sentence be executed (absent mitigating reasons on the record) if the offender was convicted of a presumptive prison offense or a felony offense involving the use of a firearm. This judge recommended that this requirement be repealed.

COMPARISON OF REVOKED EJJ OFFENDERS TO SIMILARLY-SITUATED ADULT FELONS

The legislation directing the Institute to conduct this study requested that, if possible, the study include a comparison of the adult criminal sanctions imposed on the revoked EJJ offenders with the criminal sanctions imposed on similarly-situated adult offenders at the time of their initial sentencing. After considerable thought and discussion, the Institute determined that it was not feasible to identify a population of adult offenders that was similar enough, in terms of their offenses, offense histories and demographic variables, to make a reliable comparison possible.

Despite these methodological concerns, the Institute decided that it could undertake a limited comparison on two issues: the degree to which revoked EJJ offenders are ordered to serve time in confinement - whether prison or jail; and the rate at which offenders convicted of certain types of offenses or of offenses at certain severity levels are given an upward or downward departure from the sentencing guidelines presumptive sentence. To perform this analysis, the Institute relied on data contained in two recent reports on sentencing practices published by the Minnesota Sentencing Guidelines Commission - one on sentencing practices generally and the other on sentencing practices in cases involving weapons.⁴⁹ The Institute also used data on sentencing departure rates given to it, on request, by the Commission's staff.

Comparative incarceration rates. As reported above, the revoked EJJ offenders in this study were sentenced to serve either prison or jail time at a high rate. Only nine of the 151 offenders were not sentenced to either jail or prison, resulting in an incarceration rate of 94 percent. The average duration of prison sentences was 20 months and the average jail sentence was approximately six months. The amount of prison and jail time was usually (though not consistently) reduced by credit for prior imprisonment time (*i.e.* jail credit) which, for many of these offenders, included time spent in certain types of residential placements.⁵⁰

In comparison, the overall incarceration rate for felony offenders sentenced in 1999 was 88.4 percent. The Sentencing Guidelines Commission reports that this rate has grown steadily over the last 15 years and that it varies by sex, race and judicial district. The average pronounced prison duration in 1999 was 48 months; however, data on the average length of jail time was not

⁴⁹ Minnesota Sentencing Guidelines Commission. *Sentencing Practices: Annual Summary Statistics for Felony Offenders Sentenced in 1999*. (January 2001) (hereafter SGC Annual Report); and Minnesota Sentencing Guidelines Commission. *Sentencing Practices: Offenses Involving Dangerous Weapons and Carrying a Mandatory Minimum Prison Term (M.S. § 609.11)*. (January 2001) (hereafter SGC Weapon Report).

⁵⁰ In 2000, the legislature amended the EJJ law to prohibit EJJ offenders from receiving credit for time spent in "juvenile facility custody" prior to the revocation hearing. Minn. Stat. § 260B.130, subdivision 5, as amended by 2000 Minnesota Laws, chapter 255, section 1. However, this law change did not apply to those revoked offenders in this study who were awarded credit before the amendment's effective date of August 1, 2000.

available or, because of the jail credit issue, considered too unreliable to report.⁵¹

The Institute also was able to compare the imprisonment rate of revoked EJJ offenders convicted of second degree assault (the most common offense committed by this population) with adult offenders sentenced for this crime in 1999. According to the Institute's data, 62 percent of the EJJ offenders who were convicted of second degree assault were given an executed prison sentence upon revocation. This rate is higher than the imprisonment rate reported for adult offenders convicted of that crime: 51 percent.⁵² The reason for this difference is unknown. It is possible that EJJ offenders were sentenced more harshly. It is also possible that the circumstances surrounding the assault offenses committed by the juveniles were more severe - in terms of type of weapon or injury - than those surrounding the assaults committed by the adult offenders.

Comparative sentencing departure rates. The Institute's data on revoked EJJ offenders showed that the judge imposed and executed the presumptive sentence in approximately one-half of the cases. Additionally, approximately 28 percent of the offenders received a downward departure and approximately 20 percent received an upward departure.⁵³ Overall sentencing departure rates for adult felony offenders sentenced in 1999 differed from these rates significantly: the judges executed the presumptive sentence in 75 percent of the cases, departed downward in 15 percent of the cases, and departed upward in seven percent of the cases.⁵⁴

Clearly, many factors, other than sentencing practices, may account for these differences. For example, the "mix" of offenses committed by adult felony offenders likely differed in terms of type and severity. Additionally, the offense histories of felony offenders might have differed from those of the revoked EJJ population. Perhaps most importantly, the EJJ offenders were before the sentencing judge in a completely different context than the adults: they were being revoked for having failed to abide by the judge's earlier directives, where the adult offender was, most likely, in front of the judge for the first time on the current offense. This distinction probably caused the sentencing judge to approach the EJJ sentencing departure issue differently and, perhaps, with less leniency.

The data on sentencing departure rates for the two populations with regard to second degree assault offenses may provide a more reliable comparison. As mentioned earlier, the

⁵¹ SGC Annual Report, pages 12 and 20.

⁵² SGC Weapon Report, page 4.

⁵³ See Chart 19 on page 40, *supra*.

⁵⁴ SGC Annual Report, page 23.

imprisonment rate for adults sentenced for second degree assault in 1999 was 51 percent.⁵⁵ This means that the percentage not sentenced to prison (49 percent) were given downward dispositional departures, since second degree assault is a presumptive prison offense. The Institute's data show that revoked EJJ offenders convicted of second degree assault were imprisoned at a higher rate than their adult counterparts (62 percent) and, therefore, had a lower downward departure rate (38 percent).

Another area of sentencing departure comparison relates to sentences imposed for severity level VII offenses, a severity level at which prison is presumed regardless of criminal history. This comparison may be useful because aggravated robbery, the second most common offense committed by revoked EJJ offenders, is ranked at that severity level. The Institute's data showed that 49 percent of the revoked EJJ offenders convicted of severity level VII offenses received a downward dispositional departure. In comparison, adult felony offenders sentenced for severity level VII offenses against persons⁵⁶ in 1999 had a lower downward dispositional departure rate (35 percent).⁵⁷

⁵⁵ SGC Weapon Report, page 4.

⁵⁶ Almost all of the revoked EJJ offenders convicted of severity level VII offenses were convicted of crimes against persons, as defined by the Sentencing Guidelines Commission data. Therefore, the Institute compared the EJJ offender's departure rate to that of adults convicted of similar person offenses. This comparison excludes, among other things, severity level VII drug cases, of which there were only two in the Institute's data base.

⁵⁷ The data on departure rates for adult felons convicted of severity level VII offenses were provided to the Institute by Minnesota Sentencing Guidelines Commission staff and are not contained in the Commission's published reports.

CONCLUSION

Minnesota's EJJ law has been in operation for six years - long enough to allow policymakers and other experts to begin evaluating its impact and assessing whether it is meeting the objectives articulated by the legislature in 1994. Such an evaluation is feasible because reliable data increasingly are available describing the characteristics of the EJJ offenders, the way they are handled by the courts and the juvenile justice system, and the types of outcomes they are experiencing. Although it appears that more offenders are succeeding under EJJ supervision than are failing, it is important to examine the "failures" in some detail in order to assess whether making changes to either the law or practice would enable more offenders to succeed in their "one last chance" at juvenile court rehabilitation.

While this report cannot definitively answer the question why some EJJ offenders fail, it can provide some leads to those answers. For example, by presenting a clearer picture of who the revoked offenders are (in terms of their demographic characteristics, their offenses and offense histories, and the reasons why their EJJ status was revoked), the report can help policymakers to identify better those offenders who are at risk for failure and, thereby, develop better ways to target supervision and services at them.

The report also can help answer this policy question by describing how the juvenile justice system seems to be implementing the law. The report's description shows, for example, that many of the cases are processed by means of negotiation - both at the time the offender is convicted as an EJJ and at the point of revocation. While plea negotiation also is used commonly in other criminal and juvenile justice system contexts, its use in the EJJ system underscores the need to monitor "unwritten" and informal rules of practice to ensure that the law is being implemented fairly and in keeping with legislative intent. The report's description also demonstrates that the system operates as a hybrid process, as originally envisioned by the legislature. While it imposes relatively strong and, often, punitive consequences on offenders at both conviction and revocation, it retains its rehabilitative focus by also imposing many dispositions that are treatment-oriented. Even at the point of revocation, neither judges nor probation officers seem to be implementing the EJJ law in a manner identical to the adult sentencing system. Rather, they often continue to take into account the relative youth of the offender and the need to impose consequences (like adult probation) that escalate at a progressive rate. Opinions will vary as to whether this approach runs counter to the legislative intent that the EJJ law be the serious/chronic offender's "last chance" at rehabilitation in the juvenile system. Judgments on this issue will depend both on how much discretion one thinks sentencing judges should use in responding to the individual circumstances of each case and how punitive one believes the adult criminal justice system is or should be.

The report, while mainly descriptive in its focus, does not paint a completely flattering portrait of the EJJ's implementation. To some degree, its data support the concerns raised in previous studies regarding possible disparate treatment by the juvenile justice system of offenders in

minority racial and ethnic groups. Additionally, the system's routine reliance on plea negotiation can be criticized as bypassing numerous formal routes, particularly the EJJ designation hearing, which the legislature intended the courts to follow as a means of carefully identifying the offenders who need the law's special provisions. It could be argued that the failure to use these statutory procedures more often may contribute to the "net-widening effect" criticized in prior research studies.

Without question, reasonable minds may differ on the questions of whether the EJJ law is being implemented poorly or well and whether it is in need of improvement. However, one positive conclusion to draw from the report's detailed look at the case files of revoked EJJ offenders is that these difficult offenders with their complex needs are being given more attention and more resources than they likely would have received had they been either referred to adult court for criminal prosecution or retained in the juvenile court's delinquency track. In this regard, it seems that the EJJ law is meeting a compelling and worthy objective.

APPENDIX A

STATE OF MINNESOTA

IN SUPREME COURT

#C4-85-1848

**ORDER AUTHORIZING
DISCLOSURE OF
JUVENILE COURT RECORDS**

The Minnesota Department of Corrections has contracted with the Institute on Criminal Justice, University of Minnesota Law School, (“the Institute”) to perform a study on sanctions imposed on extended jurisdiction juveniles whose juvenile court disposition was revoked, as required by 2001 Minnesota Laws First Special Session chapter 9, article 18, section 3 (“the Study”). The Legislature has directed the Institute to complete the Study on or before November 15, 2001. In order to fulfill its duties under the legislation and contract, the Institute needs access to a list (including file number, case title, county, judicial district, juvenile’s name, TCIS® number, date of birth, race, sex, offense of conviction, juvenile disposition, and adult sentence, where available) of all cases in which the extended jurisdiction juvenile disposition was revoked in calendar years 1998, 1999, and 2000 (currently estimated at 200 cases), and access to the corresponding pleadings, motions, judgments, available transcripts, juvenile disposition and adult sentence, and prior juvenile and adult offense histories in such case files (collectively referred to herein as “the Records”). Some of the Records are not accessible to the public. Pursuant to Minnesota Statutes, section 260B.171, subdivision 8 (2000), any person, including the Institute and its employees and agents, who obtains access to juvenile court records that are not accessible to the public may not release or disclose the records to any other person except as provided by law. The Institute has acknowledged in writing that it is bound by section 260B.171, subd. 8, that it will not disclose to any third party (except researchers assisting with the Study who have signed a nondisclosure agreement with the State Court Administrator’s Office) any information obtained from juvenile court case records except as authorized in this order, and that it will take all appropriate action, whether by instruction, agreement, or otherwise, to insure the protection, confidentiality and security of the information obtained from juvenile court records.

NOW THEREFORE, pursuant to Minnesota Rules of Juvenile Procedure 30.02, subdivision 3 and Minnesota Statutes, section 260B.171, subdivision 4, IT IS HEREBY ORDERED that:

1. The District Courts and the State Court Administrator's Office shall make the Records available to the Institute on Criminal Justice, University of Minnesota Law School, for purposes of the Study.
2. Any reports prepared as a result of the Study shall not disclose any information from which the identity of any EJJ offender or other characteristic that could uniquely identify any EJJ offender is ascertainable.

Dated: August 15, 2001

BY THE COURT:

Kathleen A. Blatz
Chief Justice

APPENDIX B

Data Collection Form

Data Item	Description
CASE INFORMATION	
TCIS number	
Youth ID number	
County	
District	
Name of Judge (at time of revocation)	
DEMOGRAPHIC INFORMATION	
Name	
Date of birth	
Age at EJJ conviction	
Gender	
Race and/or ethnicity	
OFFENSE AND SENTENCING INFORMATION	
Avenue to EJJ status: (check one)	<input type="checkbox"/> failed certification as adult <input type="checkbox"/> prosecutor designation <input type="checkbox"/> court designation after an EJJ hearing <input type="checkbox"/> admission to offense and waiver of hearing

Offense(s) of EJJ conviction	Was this offense a presumptive prison sentence under SG? <input type="checkbox"/> yes <input type="checkbox"/> no
Date of conviction	
Offense history	
Terms of juvenile disposition(s)	<input type="checkbox"/> residential placement (name or type _____) <input type="checkbox"/> probation <input type="checkbox"/> chem dep eval and/or treatment <input type="checkbox"/> abstain from chemicals <input type="checkbox"/> random UA or BT <input type="checkbox"/> restitution <input type="checkbox"/> community service <input type="checkbox"/> no victim contact <input type="checkbox"/> remain law abiding <input type="checkbox"/> other (list below)
Terms of stayed adult sentence	
Date of revocation	

Reason for revocation	___ reasons stated on record as follows: ___ no reasons stated on record
Terms of adult sentence imposed upon revocation	___ previously stayed prison sentence executed ___ stay of prison sentence continued on the following conditions ___ days or months in local jail or workhouse (minus ___ jail credit) ___ probation for ___ months/years ___ chem dep eval and/or treatment ___ abstain from chemicals ___ random UA or BT ___ restitution ___ community service ___ no victim contact ___ remain law abiding ___ other (list below) ___ judge stated following as mitigating reasons for continued stay of sentence (list below)

TCIS # _____

Additional information

APPENDIX C

Institute on Criminal Justice Survey of Judges Involved in EJJ Revocations in 1999-2000

1. What types of factors contributed to your decision to revoke an EJJ sentence?
2. What types of factors contributed to your decision to execute a previously stayed prison sentence?
3. What types of factors contributed to your decision to continue a stayed prison sentence and, instead, order other adult sanctions?
4. What characteristics, if any, distinguished the EJJ offenders who "failed" (i.e. were revoked) compared to those who succeeded?
5. How might the EJJ process be improved to reduce the number of offenders whose EJJ sentences are revoked?
6. Do you have any other comments or suggestions concerning the EJJ law? (Attach additional sheets if necessary)

(optional)

Name _____

Judicial district _____

APPENDIX D

EJJ Conviction Offenses in Order of Frequency

Assault in the 2nd Degree

Aggravated Robbery in the 1st Degree

Burglary in the 3rd Degree

Burglary in the 1st Degree

Burglary in the 2nd Degree

Theft of Motor Vehicle

Assault in the 3rd Degree

Assault in the 1st Degree

Criminal Sexual Conduct in the 1st Degree

Possession of a Firearm

Simple Robbery

Controlled Substance Crime in the 5th Degree

Theft of a Firearm

Arson in the 1st Degree

Controlled Substance Crime in the 2nd Degree

Criminal Sexual Conduct in the 2nd Degree

Criminal Sexual Conduct in the 3rd Degree

Criminal Sexual Conduct in the 4th Degree

Kidnapping

Terroristic Threats

Theft

Theft from a Person

Aggravated Robbery in the 2nd Degree

Aiding an Offender

Assault in the 4th Degree

Assault in the 5th Degree – for Benefit of Gang
Burglary in the 4th Degree
Check Forgery
Controlled Substance Crime in the 1st Degree
Criminal Vehicular Operation
Damage to Property in the 1st Degree
Disorderly Conduct
Reckless Discharge of a Firearm
Murder in the 1st Degree – Accomplice after the Fact
Murder in the 2nd Degree
Obstructing Legal Process
Possession of Incendiary Device
Sale of Simulated Controlled Substance

N160 Walter F. Mondale Hall 229 19th Avenue South Minneapolis, MN 55455
TEL 612.624.1885 E-MAIL icj@umn.edu