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Minnesota Supreme Court

Advisory Task Force on the Juvenile Justice System

FINAL REPORT

January 1994

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1994

Minnesota Supreme Court

Advisory Task Force on the Juvenile Justice System

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Acknowledgements

This report would not have been possible without the support and cooperation from public and private juvenile justice agencies and organizations; and a wide range of concerned practitioners. Everyone contacted by the Task Force was more than willing to give of their time and expertise to further the work of the Task Force, and for that the Task Force is truly grateful.

Many professionals, staff members, and members of the public contributed by attending the Focus Group meetings and the Public Hearings. The Task Force extends special thanks to the programs that hosted site visits and provided logistical support for the Public Hearings.

Membership of Advisory Task Force

Formation of Task Force

This Task Force was formed by Order of the Minnesota Supreme Court, on October 22, 1992, at the request of the Minnesota Legislature. The first meeting of the Task Force was held on November 24, 1992.

Task Force Members

Chair: Honorable Sandra S. Gardebring, Associate Justice, Minnesota Supreme Court

Committee Chairs:

Certification Committee:	Honorable Philip Bush, Fourth Judicial District
Due Process Rights Committee:	John Stuart, State Public Defender, and Barry Feld, Professor of Law, University of Minnesota Law School
Secure Facilities Committee:	Justice Sandra S. Gardebring
Sentencing Guidelines Committee:	Honorable Larry G. Jorgenson, Ninth Judicial District

Members:

Roxanne Bartsh, Director of Court Services, Wabasha County

James Beard, Public Member, Edina

Representative Philip Carruthers, Minnesota House of Representatives

Freddie Davis, Probation Supervisor, Hennepin County Bureau of Community Corrections

* James Hayes, Juvenile Division Director, Ramsey County Community Corrections
Department

Meg Jones, Public Member, Columbia Heights

Senator Randy C. Kelly, Minnesota State Senate

Representative Bill Macklin, Minnesota House of Representatives

Angela McCaffrey, Director of the General Practice Clinic, Hamline University School of Law

Senator Patrick D. McGowan, Minnesota State Senate

Honorable Leslie M. Metzen, District Court Judge, First Judicial District

Karel Moersfelder, Assistant Hennepin County Attorney

Horace Munoz, Ramsey County Community Corrections

David Pettiford, Institute for Black Chemical Abuse

Mary White, Director, American Indian Center

Frank Wood, Commissioner, Department of Corrections

Senator Jane Ranum, Minnesota State Senate

Representative Ann H. Rest, Minnesota House of Representatives

DeeWayne Rognstad, Deputy Sheriff, Beltrami County

Natalie Haas Steffen, Commissioner, Department of Human Services

Anthony Chu Vang, Ramsey County Community Corrections

Forrest Wipperling, Goodhue County Sheriff

Ex Officio:

Halisi Edwards, Department of Human Services

Richard Quick, Juvenile Release, Department of Corrections

Erin Sullivan Sutton, Department of Human Services

Staff:

Janet Marshall, Director, Planning, State Court Administrator's Office

Carolyn Schworer, Staff Attorney, Advisory Task Force on the Juvenile Justice System

Lori Phillips, Secretary, Supreme Court

Charge of the Advisory Task Force

The Advisory Task Force on the Juvenile Justice System was convened in November, 1992 and charged by the Legislature to conduct a study of the juvenile justice system and make recommendations concerning the following:

1. the juvenile certification process;
2. the retention of juvenile delinquency adjudication records and their use in subsequent adult proceedings;
3. the feasibility of a system of statewide juvenile guidelines;
4. the effectiveness of various juvenile justice system approaches, including behavior modification and treatment; and
5. the extension to juveniles of a non-waivable right to counsel and a right to a jury trial.¹

In May, 1993, the Task Force's charge was expanded to include the issue of:

6. the need for secure juvenile facilities in the state.

The Task Force, chaired by Justice Sandra Gardebring, was comprised of twenty-seven members, and three Ex Officio members. The membership included private citizens, community leaders, judges, attorneys, legislators, law professors, law enforcement personnel, corrections officials, probation officers, and staff of state agencies. The Task Force also sought broad based input through a variety of focus group meetings, site visits, public hearings, and presentations by experts.²

¹1992 Minnesota Laws Chap. 571, Art. 7, Sec. 13.

²See Appendix A.

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Executive Summary

Overview

This year long study, requested in response to the concern about juvenile crime, is a comprehensive look at several significant aspects of Minnesota's juvenile justice system. The Task Force's legislative mandate was limited to consideration of several juvenile justice system procedural and policy matters, specific to the area of juvenile delinquency.

Although this report makes recommendations for significant changes in the juvenile justice system, it must be recognized that the juvenile justice system is not the solution to the increase in the seriousness of juvenile crime. The Task Force has been studying procedural and policy changes that, if enacted, will strengthen the juvenile justice system's ability to respond to juvenile crime, but the ultimate solution to juvenile crime lies in the strengthening of families and communities, and the implementation of prevention and early intervention programs.

The Task Force remains committed to the public policy that the juvenile justice system should provide a continuum of supervision and appropriate programming which meets the needs of juvenile offenders, provided in the least restrictive environment that is consistent with public safety. The recommendations made by the Task Force are designed to be consistent with this public policy.

The views of the Task Force incorporate several key assumptions based on statistical data, expert testimony, information from site visits to residential placement facilities, information from other states, and public testimony:

- ▶ The pattern of criminal behavior to which the juvenile justice system must respond has changed dramatically since the system was put in place approximately fifty years ago.
- ▶ Minnesotans wish to retain rehabilitation as one of the goals of the juvenile justice system and therefore, there is value in retaining a separate system of response to crime committed by juveniles.³
- ▶ Community based responses to juvenile crime are preferable to the institutionalization of juveniles.

The Task Force carefully considered how the juvenile justice system should balance the needs of the juvenile offender, and the need to control the juvenile for the benefit of the juvenile and the protection of society. The following themes, which emerged from the discussion, represent the informed opinion of the Task Force about the future direction of Minnesota's juvenile justice system. These themes emphasize the need for:

1. a stronger response to serious and repeat juvenile crime,

³This attitude is consistent with a nationwide public opinion survey on juvenile crime conducted in 1991. The survey indicated that 78% of the persons surveyed felt that the primary purpose of the juvenile court should be to treat and rehabilitate juveniles, while only 12% felt that it should be to punish them. Ten percent indicated that it should serve both purposes equally. I. Schwartz, Juvenile Justice and Public Policy Toward a National Agenda 216 (1992).

2. a continuum of juvenile justice system response to juvenile crime based on the seriousness of the offense, the age of the offender, and the threat posed to public safety, with an increase in sentencing alternatives for juvenile offenders, and
3. strong leadership by the Department of Corrections in developing statewide juvenile justice policy, and in taking fiscal and program responsibility for serious juvenile offenders.

As the Task Force began its work, the members quickly recognized that it was the serious and repeat juvenile offenders for whom the juvenile justice system's response was inadequate. Therefore, the Task Force sought to preserve the elements of the juvenile system that were working well for the less serious offenders, and to design recommendations that would target in on the problem of the serious and repeat juvenile offender.

The stronger response to serious and repeat juvenile crime is embodied throughout the Task Force's recommendations. In order to strengthen the system's response to these juveniles, the Task Force recommends the adoption of a new concept of presumptive certification, the creation of the new category of Serious Youthful Offender, the assignment of full adult points to felonies committed by Serious Youthful Offenders, and increased physically secure capacity throughout Minnesota's public and private juvenile correctional settings. Although the Task Force's recommendations concentrate on a stronger response to serious and repeat offenders, all of the recommendations have been designed to work together to achieve an improved juvenile justice system for Minnesota.

The results of the Task Force's study will present many challenges for policymakers and practitioners. The recommendations call for changes that, if adopted, will significantly alter the juvenile justice system in Minnesota. The combination of leadership, commitment, talent, and experience of the people who served on the Task Force has ensured that these changes were carefully and thoughtfully considered prior to recommendation.

The following are the Task Force's recommendations. Further information on each area of recommendation can be found in Part II of this report.

Task Force Recommendations

The Certification Process

The Task Force recommends that the process to certify serious and repeat juvenile offenders to stand trial as adults be made easier, and that the criteria used by the court in determining whether a juvenile should be tried in adult court be changed to reflect public safety as the major concern.

Recommendations

1. The current certification law applies to all offenses; felony, gross misdemeanor, misdemeanor and petty. The Legislature should provide that the new certification process will apply only to felonies.
2. The current criteria for certification is: ". . . the child is not suitable to treatment or that the public safety is not served under the provisions of laws relating to juvenile courts." The Legislature should provide that the current criteria for certification will be changed to reflect public safety as the major concern in determining whether a juvenile should be placed in the Serious Youthful Offender category or sent to adult court. The following factors should be considered by the court in making the determination:
 - a. Seriousness of present offense
 - b. Culpability of juvenile
 - c. Prior record of delinquency
 - d. Prior program history
 - e. Dispositional options
3. Under current law counsel can be waived. The Legislature should provide that under the new certification process counsel will be appointed, or if waived there must be stand-by counsel available at all times.
4. The Legislature should provide that when a certification motion is filed in juvenile court and the juvenile is charged with First Degree Murder, the case will be presented to the grand jury for consideration of indictment within 14 days of the filing of the juvenile petition.
5. Under current law there are a number of prima facie criteria. The Legislature should provide that the prima facie criteria will be replaced with a system of presumptive certification. Presumptive certification will apply to juveniles:
 - a. 16 or 17 years old at the time of the offense,
 - b. when the charging offense is a felony offense that if charged as an adult would be a presumptive commitment to prison under the Minnesota Sentencing Guidelines, and
 - c. at the probable cause hearing the court must review the petition to see if there is probable cause for the offense and criteria a and b are met.

If all three criteria are met the burden of proof shifts to, and stays with, the juvenile to show by clear and convincing evidence that the juvenile is suitable for treatment within the juvenile system consistent with public safety or should be handled as a Serious Youthful Offender and retained in juvenile court.

6. The burden of proof, under current law, is always on the prosecution.⁴ The Legislature should provide that under the new certification process the burden of proof will remain on the prosecution for regular certifications and will be shifted to the defense for presumptive certifications.
7. The Legislature should provide that the certification hearing will be held within 30 days of the filing of the motion. This may be extended, for good cause, to a maximum of 90 days.
8. The Legislature should provide that at the end of the certification hearing the court will have three options:
 - a. deny the motion and keep the juvenile in juvenile court,
 - b. deny the motion, designate the juvenile as a Serious Youthful Offender and keep the Serious Youthful Offender in juvenile court,or
 - c. grant the motion and refer the certified adult to adult court for trial.

If the juvenile meets the criteria for presumptive certification, at the end of the certification hearing the court will have two options:

- a. deny the motion, designate the juvenile as a Serious Youthful Offender and keep the Serious Youthful Offender in juvenile court,or
 - b. grant the motion and refer the certified adult to adult court for trial.
9. The current procedure of appealing certification decisions immediately after the decision will not be changed. The Minnesota Supreme Court Advisory Committee on the Rules of Juvenile Procedure should provide that the current time standard, the same as that of post conviction criminal appeals, be changed and the pretrial appeal time standards for appeal will apply.
10. The Minnesota Supreme Court Advisory Committee on the Rules of Juvenile Procedure should revise the Rules to be consistent with these recommended statutory changes, including revision of Rule 32.05 referred to as the a. through k. factors.

⁴ Under current prima facie law the defense has the burden of producing evidence of treatability to rebut a prima facie case but the defense never has the burden of proof.

Serious Youthful Offender - A New Category

The Task Force recommends the creation of a new category, Serious Youthful Offender, for the most serious and repeat juvenile offenders. Serious Youthful Offenders would remain under the jurisdiction of the juvenile court, but their adjudications would be dealt with in a manner more similar to adult convictions.

The Task Force intends that this new category will create viable new dispositional options for juvenile court judges facing juveniles who have committed serious or repeat offenses. It will give the juvenile one last chance at success in the juvenile system, with the threat of adult sanctions as an incentive not to reoffend. The juvenile court, for a Serious Youthful Offender, will be very similar to adult court.

Recommendations

1. The Legislature should provide for a new category of juveniles within the juvenile justice system, called the Serious Youthful Offender category. The category of Serious Youthful Offender would add to the dispositional alternatives available to the juvenile court. A juvenile could be placed in the Serious Youthful Offender category by one of two ways:
 - a. The juvenile –
 - i. is 14 through 17 years of age at the time of the offense, and
 - ii. is designated by the court as a Serious Youthful Offender after a certification hearing.or
 - b. The juvenile –
 - i. is 16 or 17 years of age at the time of the offense,
 - ii. is charged with a felony offense that if charged an adult would be a presumptive commitment to prison under the Minnesota Sentencing Guidelines, and
 - iii. the prosecutor has designated, in the charging petition, that the juvenile is a Serious Youthful Offender.
 - iv. If it is later determined that the offense at plea or conviction is not a presumptive commit to prison offense, the Serious Youthful Offender designation would be removed and the juvenile returned to regular juvenile status for disposition.
3. The current limit on juvenile court jurisdiction, up to age 19, should not be changed except for juveniles who have been designated as Serious Youthful Offenders. The Legislature should extend the juvenile court jurisdiction for a Serious Youthful Offender up to age 23.

Minority Position: The Legislature should extend the juvenile court jurisdiction for a Serious Youthful Offender up to age 21.

4. The Legislature should provide that designation of a juvenile as a Serious Youthful Offender results in the following:
 - a. The right to a jury trial will be provided in juvenile court.
 - b. The effective assistance of counsel will be provided through appointment of counsel, and if waived stand-by counsel will be appointed.
 - c. The jurisdiction of the juvenile court will be extended up to 23 years of age. The juvenile court could discharge the offender from probation earlier than age 23. The length of probation should not extend beyond the statutory maximum for the same offense if it had been committed by an adult.
 - d. Serious Youthful Offenders would remain under the jurisdiction of the juvenile court. They would receive an adult sentence for their offense, which would initially be stayed, and a juvenile disposition would be ordered. The effect of mitigating and aggravating factors would be considered at sentencing.
 - e. If a Serious Youthful Offender is alleged to have committed a new offense, or is alleged to have violated the terms of probation, the court will treat the Serious Youthful Offender in the same manner as adults are treated on subsequent offenses or probation violations, including being subject to the execution of the adult stayed sentence.
 - f. All juvenile court hearings where a juvenile has been designated as a Serious Youthful Offender will be open to the public.
 - g. Where there is a designation as a Serious Youthful Offender any admission or finding of proven will result in the same criminal history points for the Minnesota Sentencing Guidelines as a similar adult conviction.
 - h. Any juvenile placed in a physically secure juvenile program as a Serious Youthful Offender will receive credit for that time if there is ever a commitment to prison for a probation violation.

Use of Juvenile Offense History in Adult Sentencing

The Task Force recommends that the offense history for Serious Youthful Offenders be utilized in the same manner as adult offense histories.

Recommendations

1. The Sentencing Guidelines Commission should provide that for the purpose of adult sentencing, Serious Youthful Offender adjudications are calculated in the same manner as adults.
2. For juveniles not designated as Serious Youthful Offenders, no change should be made in the current method of calculating adult criminal history points.

Right To A Jury Trial

Since the Serious Youthful Offenders will receive an adult sentence and their convictions will be used in future prosecutions, it is necessary for Serious Youthful Offenders to receive mandatory advice of counsel and the option of a jury trial.

Recommendation

1. The Legislature should extend the right to a jury trial to any juvenile who has been designated as a Serious Youthful Offender.

Minority Position: The Legislature should extend the right to a jury trial to all juveniles in delinquency proceedings.

Right to Counsel

The Task Force further recommends increasing juveniles' access to counsel in all delinquency matters. In order to implement these recommendations, it will be necessary for the Legislature to appropriate adequate funding.

Recommendations

1. The Legislature and the Supreme Court Advisory Committee on Rules of Juvenile Procedure should provide that in person consultation with a defense attorney be mandatory prior to the waiver of counsel or the entry of a plea by juveniles charged with misdemeanors, and provide adequate funding for such representation.
2. The Legislature and the Supreme Court Advisory Committee on the Rules of Juvenile Procedure should provide that appointment of counsel or stand-by counsel be mandatory for juveniles charged with felonies or gross misdemeanors, and provide adequate funding for such representation.
3. The Legislature and the Supreme Court Advisory Committee on the Rules of Juvenile Procedure should provide that appointment of counsel or stand-by counsel be mandatory at disposition hearings when out-of-home placement is proposed for juveniles, and provide adequate funding for such representation.
4. The Legislature should provide that the State Public Defender's Office have the responsibility to handle the appeals of juvenile delinquency proceedings, based on accepted standards of indigence, and should provide adequate funding for this purpose.
5. The Supreme Court Advisory Committee on the Rules of Juvenile Procedure should establish procedures for the consultation with counsel for juveniles and the involvement of the juvenile's parent(s) or guardian(s) in the decision to waive counsel or to admit to the petition.
6. The Supreme Court Advisory Committee on the Rules of Juvenile Procedure should promulgate a uniform advisory waiver form designed to ensure that juveniles and their parent(s) or guardian(s) are informed of their respective rights and the potential ramifications of an adjudication of delinquency.

Secure Facilities and Programming

The Task Force recommends that placement in a physically secure setting be available for serious juvenile offenders within Minnesota. The physically secure capacity should be regionally based and consist of small living units. The secure capacity is intended to be used for serious or repeat juvenile offenders who pose a threat to public safety. Programming for juvenile offenders in a secure setting should be intensive, and specifically structured to be part of the larger continuum of services provided for juvenile offenders.

Recommendations

1. The Department of Corrections should fund and license, but not necessarily operate, small, regionally based secure capacity for juvenile offenders. Programming should be intensive with emphasis on competency, chemical dependency issues, sexuality issues, anger management, etc., but would be specifically structured as part of a larger continuum of services offered to juvenile offenders. The secure capacity is intended to be used for serious or repeat juvenile offenders who may pose a threat to public safety.
2. The State Department of Corrections should ensure that programming for serious and repeat offenders, who could range in age up to 23 years of age, is provided within the continuum of juvenile services available in the state. The Legislature should provide adequate funding for the development and implementation of such programming.
3. In order to assess the effectiveness of programming or treatment for juveniles, the Department of Corrections should provide for independent evaluations to be conducted on several residential treatment facilities or programs, and the Legislature should commit adequate resources to such evaluation.

Juvenile Sentencing Guidelines and Juveniles Dispositions

The Task Force recommends the development of written dispositional criteria for each judicial district that will be used in determining juvenile delinquency dispositions.

Recommendations

1. Statewide juvenile delinquency sentencing guidelines should not be established in the State of Minnesota.
2. The Legislature should require that the judges of each judicial district, in consultation with county attorneys, public defenders, local corrections personnel, and the public, reduce to writing and publish, the criteria used by the judges in determining juvenile delinquency dispositions. This process should be monitored through the Supreme Court or the Conference of Chief Judges.
3. The Department of Corrections should fund grants that would help correctional delivery systems implement Restorative Justice principles. This effort would help develop programs that focus on balancing the needs of the victim and community. Juvenile offenders should leave the system more capable of living productively and responsibly in the community.

4. The Legislature should require diversion programs for juveniles, and provide appropriate funds to operate such juvenile diversion programs.
5. The Minnesota Supreme Court, through the Advisory Committee on the Rules of Juvenile Procedure, should develop rules on detention criteria for juveniles consistent with existing law, and modify The Rules of Juvenile Procedure to permit the challenge of juvenile detention decisions based on the statutory criteria and the Rules.
6. The Minnesota Supreme Court Advisory Committee on The Rules of Juvenile Procedure should consider whether district court judges should be able to convert a delinquency matter to a CHIPS matter for disposition purposes, in that the delinquent behavior may be more appropriately dealt with by a CHIPS disposition.

Other General Recommendations for Improvement

The Task Force is making several additional recommendations regarding the Juvenile Justice System. The Task Force also supports a continuing commitment to the prevention of juvenile crime through early intervention and the strengthening of families and communities.

Recommendations

1. The Advisory Task Force on The Juvenile Justice System strongly endorses the recommendations put forth by The Task Force on Racial Bias and recommends that the Legislature ensure resources are available for the implementation of The Racial Bias Task Force recommendations.
2. The Legislature should provide that specific data practices barriers to the sharing of certain kinds of necessary information between agencies dealing with delinquent juveniles be removed.
3. Interdisciplinary training for staff persons in the juvenile justice system such as judges, probation officers, foster home parents, and service providers, should be offered in areas such as family and community violence; child development; roots of violence; and cultural diversity.
4. The Legislature should appropriate funds to implement in the Department of Public Safety, Bureau of Criminal Apprehension, under the direction of the Criminal and Juvenile Justice Information Policy Group, a juvenile criminal history system for all offenses that would be considered a felony or gross misdemeanor if committed by an adult. The juvenile criminal history system should be similar to the current adult criminal history system.

The Juvenile Criminal History System should be designed to also support statistical analysis and evaluation of the juvenile justice system and aggregate profiles of juvenile offenders.

Introduction

The juvenile court in Minnesota is authorized to hear and decide two main categories of cases, those involving juveniles who commit unlawful acts, and those involving children who are in need of protection or services by or from the juvenile court. In its study of the juvenile justice system, the purview of this Task Force included only delinquent juveniles. Juvenile delinquency law is the state's response to acts committed by children ten years or older which would be a crime if committed by an adult.⁵

The separate juvenile justice system for children aged 10 through 17 has two equally important purposes. First, the system is to uphold the laws of the state and protect the public safety. Second, the system is to provide programming that assists the child in making positive changes in his or her life that reduce the chance that the child will reoffend.

Specifically, the purpose clause of Minnesota's juvenile law states that "The purpose of the laws relating to children alleged or adjudicated to be delinquent is to promote public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law by prohibiting certain behavior and by developing individual responsibility for lawful behavior. This purpose should be pursued through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth."⁶

If the juvenile court finds that the juvenile committed an offense, the court may order a variety of dispositions including fines, probation, counseling, placement out of the home in a residential or treatment facility, loss of driver's license, restitution or community work service, or placement in a state or local juvenile correctional facility.⁷ These dispositions may be modified by the court as necessary and are indeterminate. The court may retain jurisdiction over the juvenile as long as needed, until age nineteen.⁸

The current juvenile justice system is appropriate and effective for the great majority of the children coming before it. However, the current system needs additional tools to adequately respond to the growing percentage of older juvenile offenders who commit serious crimes.

Nationally, the serious and violent crime rate among juveniles has increased sharply in the past few years. Juveniles account for an increasing share of all violent crimes in the United States. It is very important to note that a small portion of juvenile offenders account for the bulk of all serious and violent juvenile crime.⁹ In Minnesota, the juvenile crime rates mirror these

⁵Children who violate traffic laws are not labelled as delinquents. Depending on the age of the child and the nature of the traffic offense, the matter may be handled exclusively by the adult court. Children engaging in conduct that is unlawful for them, but would not be unlawful if they were an adult, are classified as petty offenders rather than delinquents. Minn. Stat. § 260.015, 260.111 (1992).

⁶Minn. Stat. § 260.011, subd. 2(c) (1992).

⁷Minn. Stat. § 260.185, subd. 1 (1992).

⁸Minn. Stat. § 260.181, subd. 4 (1992).

⁹Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, A Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders 1 (1993) [hereinafter Comprehensive Strategy for Serious Offenders].

national trends.¹⁰

The trend toward an increase in the percentage of serious and repeat offenders in the youth population is cause for concern. Changes made to the juvenile justice system in response to this increase must not be reactionary, but based on a rational analysis of the problem.

In order to provide an effective response to juvenile crime, there needs to be a state agency providing strong leadership in the area of juvenile justice policy and taking responsibility for the serious juvenile offenders. The Task Force recommends that the Legislature mandate that the State Department of Corrections take additional fiscal and program responsibility for serious and repeat juvenile offenders, and provide adequate financial resources to the Department of Corrections for this purpose.

The Task Force also recommends that the Department of Corrections, working with local corrections delivery systems, clarify the division of responsibility for juvenile correctional services delivered by Department of Corrections and the counties, and ensure that a continuum of appropriate services for juvenile offenders who commit serious or repeat offenses is available within Minnesota.

Minnesota also needs a juvenile court that has the authority and resources to deal with the serious and repeat juvenile offenders. These recommendations are designed to extend the jurisdiction of the juvenile court and provide increased dispositional options to juvenile court judges, including the possibility of imposing adult sanctions for juveniles committing serious offenses.

On the following pages are the Task Force's recommendations for strengthening the response of the juvenile justice system to serious and repeat crime committed by juveniles. The Task Force has created a stronger response in several ways:

- 1) presumptive certification makes it easier for the courts to certify older serious juveniles to adult court,
- 2) requiring a felony offense for a certification motion concentrates efforts on the serious offenders,
- 3) the Serious Youthful Offender category creates potential adult penalties for serious or repeat juvenile offenders and the accumulation of full felony points,
- 4) juveniles can be designated Serious Youthful Offenders by action of the prosecutor if they are 16 through 17 years old, and have committed a felony offense that would be a presumptive commit to prison crime if they were an adult,
- 5) the Serious Youthful Offender category can be used for juveniles ages 14 through 17 if a reference motion is filed, again creating the possibility of adult sanctions, and
- 6) extending jurisdiction of the juvenile court for Serious Youthful Offenders up to age 23 allows the court to impose a significantly longer probationary period.

¹⁰See generally D. Storkamp, Minnesota Criminal Justice Statistical Analysis Center, Minnesota Planning, Overview of Juvenile Crime in Minnesota (Feb. 26, 1993) [hereinafter Overview of Juvenile Crime in Minnesota].

Clearly the juvenile justice system must be given adequate dispositional options, fiscal and programmatic resources to identify serious and repeat offenders, and to implement effective intervention strategies.

National Statistics on Juvenile Delinquency

The overall serious crime rate for the Nation has decreased slightly from 5,950 crimes per 100,000 population in 1980 to 5,898 crimes per 100,000 population in 1991.¹¹ However, national attention has been focused on the startling increases in serious crimes committed by juveniles during the last decade. According to the U.S. Justice Department, between 1981 and 1991, arrests of juveniles increased by 29 percent.¹² Yet within that statistic are more alarming percentages.

Evidence exists that juveniles account for an increasingly larger share of violent crimes. Juvenile arrests for violent crimes increased 41 percent from 1982-1991.¹³ Arrests for murder and non-negligent manslaughter rose by 60 percent, aggravated assault by 57 percent, weapons violations by 41 percent, forcible rape by 28 percent, and auto theft by 73 percent.¹⁴ In 1991, the juvenile arrest rate for violent offenses reached its highest level in history. In the ten year period between 1982 and 1991, the number of juvenile arrests for murder increased by 93 percent and aggravated assault arrests increased by 72 percent.¹⁵

It is disturbing that although the overall serious crime rate is decreasing, juveniles are committing a greater proportion of the serious crimes, and that the juvenile serious crime rate is dramatically increasing. In addition, the evidence is mounting that it is a very small proportion of juvenile offenders that commit most of the serious and violent juvenile crimes.

A study in Philadelphia found that chronic juvenile offenders, with five or more police contacts, constituted less than 20 percent of the delinquents.¹⁶ The study found that this small percentage of chronic offenders were responsible for approximately two-thirds of all offenses, including two-thirds of all violent offenses.¹⁷

Therefore, the juvenile justice system's response to serious juvenile crime is critical. The response should be designed to target the most serious and repeat offenders, and provide both control of the offender for public safety, and programming to decrease the likelihood of the juvenile reoffending.

¹¹Id. at 5.

¹²J. Evans, Killing Off Juvenile Justice, Youth Law News 20 (March-April 1993).

¹³Comprehensive Strategy for Serious Offenders, supra note 9, at 1.

¹⁴J. Evans, Killing Off Juvenile Justice, Youth Law News 20 (March-April 1993).

¹⁵Comprehensive Strategy for Serious Offenders, supra note 9, at 1.

¹⁶Id. at 22 (referring to the Philadelphia birth cohort study by Wolfgang, Figlio, and Sellin in 1972).

¹⁷Id.

Statistical Overview of Juvenile Crime in Minnesota

Over the last ten years, Minnesota has followed a crime trend similar to the national trend, but had a lower crime rate¹⁸ than the nation in 1991. In 1991 Minnesota's crime rate was 4,599 crimes per 100,000 population. Minnesota's overall crime rate decreased 4 percent between 1980 and 1991.¹⁹ In 1991, out of 133,185 apprehensions/arrests for all levels of crimes, only 22,002 or 17 percent were juvenile apprehensions.²⁰

A look at the serious crime rate presents a different picture. In Minnesota, the total number of serious crimes known or reported to law enforcement agencies has fluctuated from 1980 to 1991 but overall has increased by 4 percent.²¹

The apprehension/arrest rate for serious crime has increased 19 percent between 1980 and 1991. The number of juveniles apprehended for serious crimes increased 10 percent between 1980 and 1991, from 16,044 apprehensions in 1980 to 17,688 apprehensions in 1991. The number of adults arrested for serious crime during the same time period increased 47 percent. However, it is noteworthy that juvenile apprehensions accounted for 43 percent of the total number of arrests/apprehensions for serious crimes in 1991.²²

In 1991, out of 22,002 apprehensions of juveniles only 1,383 apprehensions were for the violent offenses of Homicide, Negligent Manslaughter, Rape, Robbery, or Aggravated Assault.²³ These are very serious crimes, however it is important to keep in perspective that juvenile apprehensions for these violent crimes accounted for only 1% of all the criminal arrests/apprehensions in the state, and only 6% of all juvenile apprehensions.

The apprehensions/arrests for property crimes in 1991, indicate that juveniles accounted for 42 percent of the 4,703 burglary apprehensions/arrests, 45 percent of the 27,142 larceny apprehensions/arrests, 54 percent of the 3,551 auto theft apprehensions/arrests and 55 percent of the 293 arson apprehensions/arrests.²⁴

Although juveniles charged with violent offenses represent a relatively small portion of the state's juvenile court caseload, they represent a major concern to the public. Particularly disturbing is the fact that this small group of serious and repeat juvenile offenders continues to grow. The Task Force is recommending specific policy and procedural changes to strengthen the juvenile justice system's ability to respond to serious and repeat juvenile crime, but the

¹⁸Using a crime or arrest/apprehension rate makes it possible to study activity over time and to make comparisons that take into account the changes in the population. The rate is the number of crimes or arrests/apprehensions committed per 100,000 population. Therefore, it is possible to have a decrease in the number of crimes or arrests/apprehensions, while experiencing an increase in the crime or arrest/apprehension rate.

¹⁹Overview of Juvenile Crime in Minnesota, supra note 10, at 5.

²⁰Minnesota Criminal Justice Statistical Analysis Center, Minnesota Planning, Minnesota Arrests 1991 State Totals (1992). Apprehension occurs when an individual under the age of 18 is taken into custody by a law enforcement officer on the basis that the individual has committed an offense.

²¹Overview of Juvenile Crime in Minnesota, supra note 10, at 5.

²²Id. at 6.

²³Minnesota Criminal Justice Statistical Analysis Center, Minnesota Planning, Minnesota Arrests 1991 State Totals (1992).

²⁴Overview of Juvenile Crime in Minnesota, supra note 10, at 9.

ultimate solution to juvenile crime lies in the strengthening of families and communities, and the implementation of prevention and early intervention programs. Unfortunately, the juvenile justice system can only be reactive, after the crimes have occurred.

Prevention and Early Intervention

Juvenile crime is directly related to the quality of life in a community – not to the degree of punishment handed out by the government.²⁵ In a recent report on juvenile crime prevention the St. Paul City Council stated, "Juvenile crime is a complex, multi-dimensional, multi-causational phenomenon. However, like most other serious social problems, its roots lie in familial and societal neglect."²⁶

The inter-relationships among family, religion, health care, education, housing, employment, community values, and crime mean that all segments of the community must play an active role in combatting juvenile delinquency. The juvenile justice system alone cannot address all the underlying factors that cause crime.²⁷ The Task Force believes that an effective strategy for combatting juvenile crime must contain two principle components: 1) the reduction of the quantity and severity of juvenile crime by focusing prevention on at-risk youth; and 2) increasing the ability of the juvenile justice system to respond to juvenile offenders, particularly the early identification and control of the serious and repeat offenders.

The Task Force's charge essentially limited its recommendations to addressing the second of these two components, the juvenile justice system's response to juvenile crime. However, the Task Force strongly believes that reversing the trend of an increasing juvenile crime rate will also require increased resources in the areas of juvenile crime prevention and community based early intervention. Resources will need to be committed to expanding and strengthening community-based rehabilitation programs and to funding programs that prevent crime by meeting the developmental needs of children and their families. The juvenile justice system represents only part of the solution to the increasing juvenile crime rate.

The other part of the solution lies in the broader social and economic context of the society. The problems of individuals can be resolved far more quickly and easily in those communities that offer meaningful family, social and economic opportunities and life free from violence and serious crime.²⁸

The national Office of Juvenile Justice and Delinquency Prevention researched the causes and correlates of juvenile delinquency. The office conducted a longitudinal study of high risk youth in three sites. The major factors identified as influencing delinquency were:

- 1) delinquent peer groups
- 2) poor school performance

²⁵National Council on Crime and Delinquency, Reducing Crime in America A Pragmatic Approach, Public Policy Statement by the NCCD Board of Directors 33 (1993).

²⁶City Council Investigation and Research Center, St. Paul City Council, Juvenile Crime Prevention 1 (1993).

²⁷National Council on Crime and Delinquency, Reducing Crime in America A Pragmatic Approach, Public Policy Statement by the NCCD Board of Directors 19-20 (1993).

²⁸Id. at 48.

- 3) high-crime neighborhoods
- 4) weak family attachments
- 5) lack of constant discipline and behavioral monitoring, and
- 6) physical or sexual abuse²⁹

A link has also been found to exist between childhood victimization and delinquent behavior.³⁰ The risk for future violent offending is significantly greater if a child is physically or sexually abused or neglected early in life.³¹

Truancy is often a signal for impending academic failure, family dysfunction, alcohol or substance abuse. Attention should be given to minor misbehavior by children of late elementary and middle school age as precursors to more serious problems in later adolescence.³²

Unfortunately, the factors identified as major influences in whether a child engages in delinquent behavior are on the rise in Minnesota. One child in five now lives in poverty in Minnesota. From 1979 to 1989, child poverty in this state increased 78 percent.³³ Forty-seven percent of Minnesota's 9th graders report using alcohol; and 76 percent of 12th graders report using alcohol.³⁴ While Minnesota has one of the highest high school graduation rates in the country at 88 percent in 1987, the rate for African American youth was only 50 percent; for American Indian youth, 52 percent; and for Hispanic youth, 73 percent.³⁵ Research suggests that there is a high correlation between not completing high school and being sent to prison.³⁶

A look at the juveniles actually involved in Minnesota's juvenile justice system demonstrates the key nature of these identified risk factors. In the spring of 1991 the Department of Education administered a survey to 3,573 juveniles in Minnesota Alternative Schools, Area Learning Center, Residential Treatment Centers and Corrections/Detention Centers.³⁷ Researchers then drew conclusions about the juveniles in these special populations.

²⁹Comprehensive Strategy for Serious Offenders, *supra* note 9, at 5.

³⁰Being abused or neglected as a child increases a person's risk for an apprehension as a juvenile by 53 percent, as an adult by 38 percent, and for an arrest/apprehension for a violent crime by 38 percent. Compared to control groups, abused and neglected children are involved in delinquency and criminality earlier, commit more offenses, and more often become chronic or repeat offenders. Cathy Spatz Widom, Long-Term Consequences of Early Childhood Victimization, Summary of a presentation to the annual meeting of the American Association for the Advancement of Science (Feb. 16, 1991).

³¹Comprehensive Strategy for Serious Offenders, *supra* note 9, at 5.

³²National Council of Juvenile and Family Court Judges, A New Approach to Runaway, Truant, Substance Abusing and Beyond Control Children, 41 Juv. & Fam. Ct. J. 7 (1990).

³³The Action for Children Commission, Minnesota Planning, Kids Can't Wait Action for Minnesota's Children at i (1992).

³⁴*Id.*

³⁵*Id.*

³⁶"An examination of high school graduation rates suggests the efficacy of education in combatting crime. States with high graduation rates tend to have low violent crime rates. Conversely, those states with low high school graduation rates generally have high violent crime rates. There is a high correlation between dropping out of school and ending up in prison -- a higher correlation than there is between smoking and lung cancer." Citizens Council, Responding to Violent Crime 6-7 (1991).

³⁷Prevention and Risk Reduction Unit, Minnesota Department of Education, A Report on Special Populations (1991).

All the special populations surveyed in 1991 include disproportionate numbers of juveniles of color and young people from single parent and other nontraditional households.³⁸ The Minnesota Supreme Court's Task Force on Racial Bias in the Judicial System found that minority youth are overrepresented within the juvenile justice system. The Task Force on Racial Bias found that although people of color comprise 8 percent of the state's juvenile population, 22 percent of juveniles processed as delinquent are people of color.³⁹ The families of juveniles surveyed in the special populations study were found to have elevated rates of alcohol and other drug problems and physical abuse, and these young people are much more often the victims of sexual abuse.⁴⁰

Far more significant than any difficulties with school, what distinguishes these young people in the special populations from other public school students are higher rates of antisocial behavior, early sexual activity, alcohol and other drug abuse, and suicide attempts.⁴¹ Among the special populations surveyed by the Department of Education, a physical or sexual abuse history doubled the likelihood of deliberate self-injury and suicide attempt.⁴²

Any comprehensive strategy to reduce juvenile crime must include a component aimed at these root causes of delinquency. It is critical that prevention efforts be increased if delinquency is to be reduced among high-risk youth, and fewer children are to enter the juvenile justice system in the future.

The national Office of Juvenile Justice and Delinquency Prevention identified the following key principles which provide a broad framework for preventing delinquent conduct and reducing juvenile involvement in serious delinquency:

- 1) strengthen families
- 2) support core social institutions
- 3) promote prevention strategies and programs
- 4) intervene immediately and effectively when delinquent behavior occurs, and
- 5) identify and control the small percentage of serious violent, and chronic juvenile offenders.⁴³

In reference to the need for prevention the Ramsey County Gang/Drug Policy Task Force stated, "In the long run, this area is most critical and probably the least developed or funded at the current time. We need to seek resources from all levels of government, the business and charitable communities and voluntary citizen involvement to support increased efforts at this level. The areas of prevention that are most important include:

- a) early childhood care, health services and education

³⁸Id. at 4.

³⁹Minnesota Supreme Court, Task Force on Racial Bias in the Judicial System, Final Report, at S-25 (1993) (citing Minnesota Criminal Justice Statistical Analysis Center, Minorities in the Juvenile Justice System, At-a-Glance 5, 9 (1991)).

⁴⁰Prevention and Risk Reduction Unit, Minnesota Department of Education, A Report on Special Populations 4 (1991).

⁴¹Id.

⁴²Id.

⁴³Comprehensive Strategy for Serious Offenders, supra note 9, at 7.

- b) parent and family support and education
- c) economic opportunity and employment preparation for both parents and youth
- d) educational innovation, support and outreach to combat the influence of gangs and to assist at-risk youth to succeed in school
- e) community-based activity and outreach programs for children and youth ages 7-17 who are most at-risk
- f) community education to alert parents, neighborhood groups, agency staff, and government officials to the gang problem"⁴⁴

The recommendations of the Juvenile Justice Task Force will assist greatly in the identification and control of the small percentage of juvenile offenders who commit serious and repeat offenses. However, it will take continued and expanded collaborative efforts of educators, parents, service providers, and church, business, and other community leaders to ensure that at-risk juveniles have the opportunities they need to develop into productive citizens. This means programs to assist both high risk children, and the families who are at-risk, in learning life skills and community values, attaining educational competency, accessing adequate recreational resources, developing employment skills, receiving appropriate health care, gaining access to low-cost housing, and finding opportunities for economic self-reliance.

The Balanced Approach and Restorative Justice

The Balanced Approach is a relatively new concept that emphasizes community involvement in the juvenile justice system. It attempts to resolve the traditional conflicts of rehabilitation versus punishment, treatment versus control, the community versus the delinquent youth, and the public safety versus youth development by encouraging active, outcome focused sanctioning and supervision strategies.⁴⁵ The Balanced Approach places strong reliance on community support and the need to relay a clear message to the community that the juvenile justice professionals can not rehabilitate youth and reintegrate the youth into the community alone.

On September 30, 1992, the national Office of Juvenile Justice and Delinquency Prevention awarded a grant to Florida Atlantic University and a consortium of juvenile justice organizations and national experts, to implement a new "Balanced Approach and Restorative Justice" project aimed at developing model systems for community supervision of juvenile offenders based on the Balanced Approach.⁴⁶ The Task Force considered the concept of the Balanced Approach and Restorative Justice, and several members of the Task Force met with Dennis Maloney, a national expert on the Balanced Approach.⁴⁷

As a result of its work, the Task Force strongly supports the concepts embodied in the Balanced Approach and Restorative Justice, and believes that the current Minnesota statutes

⁴⁴Ramsey County Gang/Drug Policy Task Force Report, Why Gangs? 44 (1992).

⁴⁵D. Maloney, D. Romig & T. Armstrong, Juvenile Probation: The Balanced Approach 50 (1980).

⁴⁶D. Maloney, Implementing the Balanced Approach and Restorative Justice for Juvenile Offenders: An Overview of a New OJJDP Initiative 1 (undated).

⁴⁷The Task Force met with Dennis Maloney, author of The Balanced Approach and Director of the Dechutes County Juvenile Department in Oregon, on April 30, 1993. In addition, Tom English, Executive Director of The Oregon Council on Crime and Delinquency, presented to the Task Force on May 14, 1993.

and practice are largely consistent with these concepts. A number of Minnesota organizations⁴⁸ have had workshop presentations on these concepts during the past few years. The Task Force is supportive of the juvenile justice system continuing to seek training in these concepts and apply the principles of the Balanced Approach.

The Principles of the Balanced Approach

The Balanced Approach defines three primary responsibilities for the juvenile justice system in working with a juvenile offender:

1. To protect the citizens from juvenile crime;
2. To hold juvenile offenders directly accountable for their actions; and
3. To develop competency in the juveniles who come into contact with the juvenile justice system.⁴⁹

The Balanced Approach suggests a procedural and programmatic continuum that intervenes according to the degree of need or risk presented by the juvenile. As the need or risk increases the intensity of the juvenile justice system response increases. The Balanced Approach terms this concept a progressive response system.

In order to fulfill these responsibilities, the Balanced Approach sets forth three principles which, in the context of an individualized response to delinquent juveniles, define practical, measurable outcomes for community supervision and provide an overall framework for the juvenile justice system. These three principles are community protection, accountability or restorative justice, and competency development.⁵⁰

The community protection principle stresses that the public has a right to a safe and secure community.⁵¹ The Balanced Approach reaffirms the responsibility of the juvenile justice system to ensure the safety of citizens, and at the same time suggests a broader strategy geared to keeping offenders in the community to the greatest extent possible through the use of a progressive response system. Community protection is placed in the context of a strengthened and expanded community supervision system that encourages use of a wide variety of community resources.⁵²

The accountability or restorative justice principle stresses that "whenever an offense occurs, an obligation by the juvenile offender incurs."⁵³ This principle places a new priority on ensuring

⁴⁸Minnesota Corrections Association, Minnesota Association of County Probation Officers, and the Minnesota District Judges' Association.

⁴⁹D. Maloney, D. Romig & T. Armstrong, Juvenile Probation: The Balanced Approach 10 (1989).

⁵⁰Id.

⁵¹Id.

⁵²D. Maloney, Implementing the Balanced Approach and Restorative Justice for Juvenile Offenders: An Overview of a new OJJDP Initiative 3 (undated).

⁵³D. Maloney, D. Romig & T. Armstrong, Juvenile Probation: The Balanced Approach 10 (1989).

that offenders take action to restore the losses resulting from their crimes. This principle ensures that the system responds to illegal behavior in such a way the offender is made aware and responsible for the loss, damage, or injury perpetrated upon the victim.⁵⁴

The principle of competency development stresses that "juvenile offenders who come within the jurisdiction of the court should leave the system more capable of living productively and responsibly in the community."⁵⁵ This concept replaces the more limited traditional treatment/services emphasis with a more active focus on performance outcomes such as social competence, employability and the development of life skills.⁵⁶

Implementing the Balanced Approach principles would require that each juvenile be assessed in all three areas. The case plan for the juvenile must then include means to ensure that "the community is protected; that each youth receives sufficient quantity and individualized types of accountability assignments which internalize the negative consequences of crime in him; and that each youth acquires those competencies which eliminate or reduce the contributing factors for his past offense behavior."⁵⁷

The Task Force felt the principles of the Balanced Approach which encourage responsiveness of the system to the community, the offender, and the victim could be beneficial to the juvenile justice system in Minnesota. Therefore, the Task Force recommends that the Department of Corrections fund grants that would encourage local delivery systems to implement these principles.⁵⁸

⁵⁴Id. at 6.

⁵⁵Id. at 10.

⁵⁶D. Maloney, Implementing the Balanced Approach and Restorative Justice for Juvenile Offenders: An Overview of a New OJJDP Initiative 2 (undated).

⁵⁷D. Maloney, D. Romig & T. Armstrong, Juvenile Probation: The Balanced Approach 11 (1989).

⁵⁸The Task Force recommendation on the Balanced Approach and Restorative Justice is in the section on Juvenile Sentencing Guidelines and Juvenile Dispositions.

Part II

Task Force Recommendations

I. Certification

The Current Certification Process

In Minnesota, a juvenile from 10 through 17 years of age, who commits an unlawful act usually remains under the delinquency jurisdiction of the juvenile court. In fact, in 1992 out of 25,747 juvenile delinquency petitions filed only 101 of the petitions were transferred to the adult criminal system for prosecution.⁵⁹

Current Minnesota law provides a process by which a juvenile, 14 years of age or older, who is alleged to have committed any unlawful act may be certified by the juvenile court to be prosecuted in the adult criminal system.⁶⁰ Under Minnesota statutes the juvenile may be certified to stand trial as an adult if: 1) the prosecutor files a motion to certify with the juvenile court, 2) a certification hearing is held in juvenile court, and 3) the juvenile court determines that the juvenile should be certified as an adult for prosecution.⁶¹

A motion to certify must be filed at the juvenile's first appearance, and the motion must be ruled on prior to any further action on the case in juvenile court. A motion to certify initiates the process of further evaluation that automatically includes input from probation, mental health, victims, family, offender, defense counsel, and ultimately the court. The motion to certify can be withdrawn by the prosecution if further investigation and input from others indicates regular juvenile delinquency status is more appropriate. Once a motion is withdrawn in a case, it can not be reinstated.

The judge's decision to certify the juvenile to adult court, or to retain the juvenile in juvenile court must be in writing, and must include findings of fact and conclusions of law to support the decision.⁶² The decision is an appealable order. If certified, the juvenile who is now a "certified adult" may be prosecuted, tried, convicted, and sentenced as an adult.

Current Criteria for Certification

The juvenile court may certify a juvenile for prosecution in the adult criminal system if it finds probable cause to believe that the child committed the offense alleged in the delinquency petition, and there is clear and convincing evidence that the child is not suitable to treatment

⁵⁹S. Krmpotich, Minnesota Supreme Court, Graphic Summary of Reference Hearings in Juvenile Court (Apr. 23, 1993) [hereinafter Graphic Summary of Reference Hearings].

⁶⁰Minn. Stat. § 260.125 (1992).

⁶¹Minn. Stat. § 260.125, subd. 2 (a), (b), (c), (d) (1992). The Minnesota Supreme Court has held that only a prosecutor may file a certification motion; a juvenile can not on his or her own motion seek certification to adult court. Welfare of K.A.A., 410 N.W.2d 836 (Minn. 1987).

⁶²Minn. R. Juv. P. 32.06, subd. 2 (A), (B).

or that the public safety is not served within the juvenile system.⁶³ Evidence need only show that either the child is unamenable to treatment or that public safety is not served.

The juvenile court has broad discretion to determine whether or not to certify a juvenile to adult court. The determination that a juvenile is not amenable to treatment in the juvenile system must be based on psychological data, or a history of misconduct as well as the juvenile's age, level of maturity, and seriousness of the offense.⁶⁴ After a finding of probable cause, the court, on its own motion or on the motion of the juvenile's attorney or the prosecution, may order a social, psychiatric or psychological study concerning the juvenile who is the subject of the certification hearing.⁶⁵

The juvenile court's certification decision is based on the totality of the circumstances. In making the certification decision, the court is to consider the totality of the circumstances as outlined by eleven factors listed in Rule 32 of the Minnesota Rules of Juvenile Procedure.⁶⁶ In considering and weighing the eleven factors, the court determines whether the prosecution has presented clear and convincing evidence in support of the certification.

The Current *Prima Facie* Case for Certification

Essentially, the two central issues upon which motions for certification are decided are 1) suitability to treatment in the juvenile system, and 2) the ability of the juvenile system to adequately provide for the public safety. During the 1980's, for juveniles at least 16 years of age, the Legislature enacted a series of prima facie criteria which place a greater burden upon the defense to refute the prosecution's initial assertions that the juvenile is unamenable to treatment or that public safety is not served by retention in the juvenile system.⁶⁷

The prosecution may create a prima facie case for certification by presenting evidence that one

⁶³"(d) The court finds that

- (1) there is probable cause as defined by the rules of criminal procedure promulgated pursuant to section 480.059, to believe the child committed the offense alleged by the delinquency petition and
- (2) the prosecuting authority has demonstrated by clear and convincing evidence that the child is not suitable to treatment or that the public safety is not served under the provisions of laws relating to juvenile courts."

Minn. Stat. § 260.125, subd. 2(d)(1), (2) (1992).

⁶⁴In re Welfare of R.D.W., 407 N.W.2d 113, 117 (Minn. App. 1987), pet. for rev. denied (Minn.).

⁶⁵Minn. R. Juv. P. 32.03.

⁶⁶The eleven factors the court may consider, but is not limited to are:

- (a) the seriousness of the offense in terms of community protection,
- (b) the circumstances surrounding the offense,
- (c) whether the offense was committed in an aggressive, violent, premeditated or willful manner,
- (d) whether the offense was directed against persons or property, the greater weight being given to an offense against person, especially if personal injury resulted,
- (e) the reasonably foreseeable consequences of the act,
- (f) the absence of adequate protective and security facilities available to the juvenile treatment system,
- (g) the sophistication and maturity of the child as determined by consideration of the child's home, environmental situation, emotional attitude and pattern of living,
- (h) the record and previous history of the child,
- (i) whether the child acted with particular cruelty or disregard for the life or safety of another,
- (j) whether the offense involved a high degree of sophistication or planning by the child, and
- (k) whether there is sufficient time available before the child reaches age nineteen to provide appropriate treatment and control.

Minn. R. Juv. P. 32.05, subd. 2.

⁶⁷Minn. Stat. § 260.125, subd. 3(1)(c) (1992).

of several prima facie situations exist.⁶⁸ A prima facie case for certification is established if the juvenile was at least 16 years of age at the time of the offense, and is alleged to have committed:

- 1) First degree murder, or
- 2) an aggravated felony against a person involving particular cruelty, a high degree of sophistication or planing, or use of a firearm, or
- 3) one of several other felonies listed in the statute, combined with a particular type of prior offense history specified in the statute.

The presence of any of these circumstances creates a presumption that the public safety is not served or that the juvenile is unamenable to treatment within the juvenile court system. The juvenile may rebut the prima facie case by presenting evidence that he or she is amenable to treatment within the juvenile system, or that his or her retention in the juvenile system would not pose a risk to public safety.

When the prosecution's prima facie case is rebutted by the defense, the court returns to considering of the totality of the circumstances in order to determine the issues of amenability to treatment and public safety. The court decides the issue on the basis of the entire record without reference to the prima facie case.⁶⁹ The court makes its findings based on the same eleven factors set forth in Rule 32 of the Minnesota Rules of Juvenile Procedure that are considered relevant to the certification decision.

Statistical Information on Certification

Certification of juvenile offenders to adult court represents an extremely small proportion of the total casework of the juvenile court. In 1992, less than one percent of all delinquency offenses were referred to adult court.⁷⁰ In 1992, there were over 43,000 petitions filed in juvenile court of which approximately 25,400 were delinquency petitions.⁷¹ Out of these 25,400 delinquency petitions, motions to certify were filed on only 160 juveniles.⁷² In 1992, the juvenile court granted 101 of the 160 motions to certify the juvenile offender to adult criminal court.⁷³

Juveniles for whom the juvenile court denied the motion to certify, received a variety of dispositions. Thirty-six percent of the juveniles were committed to the Commissioner of

⁶⁸Minn. Stat. § 260.125, subd. 3(1)(c) (1992).

⁶⁹In re Welfare of D.F.B., 433 N.W.2d 79, 81 (Minn. 1988).

⁷⁰Only .4 % of the delinquency petitions were certified to adult court for prosecution. Graphic Summary of Reference Hearings, supra note 59.

⁷¹Research and Planning Office, State Court Administration, Minnesota Supreme Court, Statistical Highlights 1992 Minnesota State Courts 27 (1993).

⁷²Graphic Summary of Reference Hearings, supra note 59.

⁷³Id.

Corrections or placed in a local correctional program; 29 percent of the juveniles were placed on probation; 14 percent of the juveniles were placed in a treatment program; and 21 percent of the cases were dismissed.⁷⁴

The majority of juveniles certified to adult court are property offenders. In 1992, 52 percent of the youth sentenced in adult court were property offenders. Person offenders represented 35 percent of the petitions for certification granted, and other crimes represented 13 percent of the granted petitions.⁷⁵ The proportion of certified cases that involve person offenses has fluctuated, but is generally on the rise. Between 1981 and 1991, the number of juveniles sentenced in adult court for person offenses increased by 37 percent; the increase for property offenders was 18 percent.⁷⁶

The increase in the number of offenses against persons has not been uniform across the various types of person crimes. Between 1981 and 1991 there has been an increase in the number of juveniles sentenced in adult court for homicide and sex offenses, while the number of cases involving robbery have decreased. In 1991, the distribution of person offenders by specific offense category was as follows: five for homicide, six for robbery, nine for assault, and thirteen for sex offenses.⁷⁷

The Minnesota Sentencing Guidelines used for adult felony sentencing, rank all felony offenses into ten severity levels which are based on the seriousness of the crime. Level one is the least severe, and level ten is the most severe. Based on the severity level of the offense and the offender's criminal history, the guidelines recommend whether the offender should receive a prison sentence. At severity level seven and above, the guidelines recommend a prison sentence regardless of the offender's criminal history.⁷⁸

In 1991, 23 percent of the juveniles sentenced in adult court were convicted of severity level seven through ten offenses.⁷⁹ Twenty-two percent of the juveniles sentenced in adult court were convicted of severity level five through six offenses.⁸⁰ Fifty-four percent of the juveniles sentenced as adults were convicted of crimes that were severity level four or below.⁸¹

⁷⁴Id.

⁷⁵Id.

⁷⁶Research and Planning Office, State Court Administration, Minnesota Supreme Court, Statistical Highlights 1992 Minnesota State Courts 27 (1993).

⁷⁷Minnesota Sentencing Guidelines Commission, Sentencing Practices: Juvenile Offenders Sentenced for Felonies in Adult Court 2 (1993). The monitoring system of the Minnesota Sentencing Guidelines Commission includes only those juvenile offenders who were convicted and sentenced in adult court for a felony level offense. The monitoring system does not include juvenile offenders convicted of Murder in the First Degree, since that offense carries a mandatory life sentence and is not covered by the guidelines.

⁷⁸Id.

⁷⁹Id. The severity levels seven through ten include such crimes as: Second and Third Degree Murder, First Degree Assault, First Degree Criminal Sexual Conduct, and Aggravated Robbery. Minnesota Sentencing Guidelines, § IV Sentencing Guidelines Grid (1992).

⁸⁰Graphic Summary of Reference Hearings, supra note 59. Severity level five through six includes crimes such as: Second Degree Criminal Sexual Conduct, Residential Burglary, and Simple Robbery. Minnesota Sentencing Guidelines, § IV Sentencing Guidelines Grid (1992).

⁸¹Graphic Summary of Reference Hearings, supra note 59. Severity level four and below includes such crimes as: Nonresidential burglary, theft crimes, check forgery, and sale of simulated controlled substance. Minnesota Sentencing Guidelines, § IV Sentencing Guidelines Grid (1992).

The majority of juveniles sentenced in adult court receive some type of incarceration. The total incarceration rate for juveniles sentenced as adults in 1991 was 85 percent, of which 18 percent were placed in state correctional institutions and 67 percent were placed in local facilities such as jails.⁸² In 1991, the average prison sentence for juvenile offenders sentenced in adult court was 53.4 months.⁸³

Although juvenile offenders tend to receive a longer prison sentence than adult offenders, they also receive a higher percentage of downward dispositional departures from the recommended guidelines sentence than adults.⁸⁴ In 1991, in 58 percent of the cases involving a certified juvenile, for which the guidelines recommended prison, the court downward departed and placed the offender on probation.⁸⁵ The court downward departed in 34 percent of the cases involving adults.⁸⁶ The reasons cited by the court for departing from the recommended prison sentence in the cases involving certified juveniles included: the age of the offender, the offender's amenability to treatment, and the recommendation or agreement of the prosecution.⁸⁷

In general, the juveniles who are certified to adult criminal court are male and 16 or 17 years of age. In 1991, of the juveniles certified 95 percent were male, and five percent were female.⁸⁸ In the same year, 74 percent were 17 years of age; and 22 percent were 16 years of age. In other words, 96 percent were 17 or 16 years of age, and only 4 percent were younger than age 16.⁸⁹ Race distributions for 1991 indicate that 71 percent of the certified juveniles are white; 17 percent are African American; 6 percent are Native American; and 6 percent are of other races.⁹⁰

Simplify the Certification Process for the Most Serious Offenders

The certification process is used in a very small number of juvenile cases. It provides prosecutors and the courts a dispositional alternative for juveniles who are 14 through 17 years of age, but have demonstrated that they are no longer appropriate for the jurisdiction of the juvenile justice system.⁹¹

⁸²Minnesota Sentencing Guidelines Commission, *Sentencing Practices: Juvenile Offenders Sentenced for Felonies in Adult Court* 3 (1993).

⁸³*Id.* at 4.

⁸⁴*Id.*

⁸⁵*Id.* at 3.

⁸⁶*Id.*

⁸⁷*Id.*

⁸⁸Graphic Summary of Reference Hearings, *supra* note 59.

⁸⁹*Id.*

⁹⁰*Id.*

⁹¹The Task Force agreed that, as is current law, a juvenile should be 14 years of age or older before certification to adult criminal court is considered. The Task Force supported the concept that Minnesota's juvenile justice system should be able to retain and provide appropriate programming or find appropriate resources for all juveniles under 14 years of age.

The Task Force recommends that this dispositional alternative be used for a select group of juveniles who commit the more serious crimes and have demonstrated that they pose a risk to public safety. Therefore, the Task Force recommends that a motion for certification require at least a felony level offense, and that the criteria used by the court in determining whether a juvenile should be certified to adult court be changed to reflect public safety as the major concern.

In order to reinforce the public safety issue, increase the objectivity of the factors considered by the court in a certification hearing, and simplify the rules of court, the Task Force recommends the court use following factors to make the certification determination:

1. seriousness of the present offense
2. culpability of the juvenile
3. prior record of delinquency
4. prior program history
5. dispositional options

These five factors would replace the more subjective eleven factors contained in Rule 32 of the Rules of Juvenile Procedure.

The Task Force recommends that the process to certify the most serious juvenile offenders for prosecution as adults be made easier. The prosecutor will retain discretion as to whether or not to file a motion for certification on a particular juvenile, and the juvenile court will retain its discretion to determine when certification to adult criminal court is appropriate.

However, the Task Force recommends that the courts's discretion be guided by the legislative judgment that juveniles who are older and have committed serious crimes are the most likely and appropriate candidates for certification to adult court. The Task Force recommends that a system of presumptive certification replace the current system of prima facie criteria to make it easier it certify older, serious offenders. The Task Force heard testimony that indicated that the current prima facie system is confusing and unworkable. In addition, concern was raised that the intent of the prima facie system, to make it easier to certify certain juveniles, has not been accomplished under the current law.

The Task Force recommends that if the juvenile was 16 or 17 years old at the time of the offense, and the charging offense is a felony that if charged as an adult would be a presumptive commitment to prison under the Minnesota Sentencing Guidelines,⁹² there will be a presumption that the juvenile should be tried as an adult in criminal court. This presumption shifts the burden of proving fitness for juvenile court jurisdiction to the juvenile.

This presumption could only be rebutted by the presentation of clear and convincing evidence by the defense that the juvenile is appropriate for retention in the juvenile justice system. Unlike the prima facie case, a presentation by the defense of rebuttal evidence will not shift the burden of proof back to the prosecution. Under the presumptive certification system, the defense will always have the burden of proving the juvenile should be retained in the juvenile system. Should the court decide not to certify a juvenile who meets the criteria for a presumptive certification, it will be mandatory that at the end of the certification hearing the

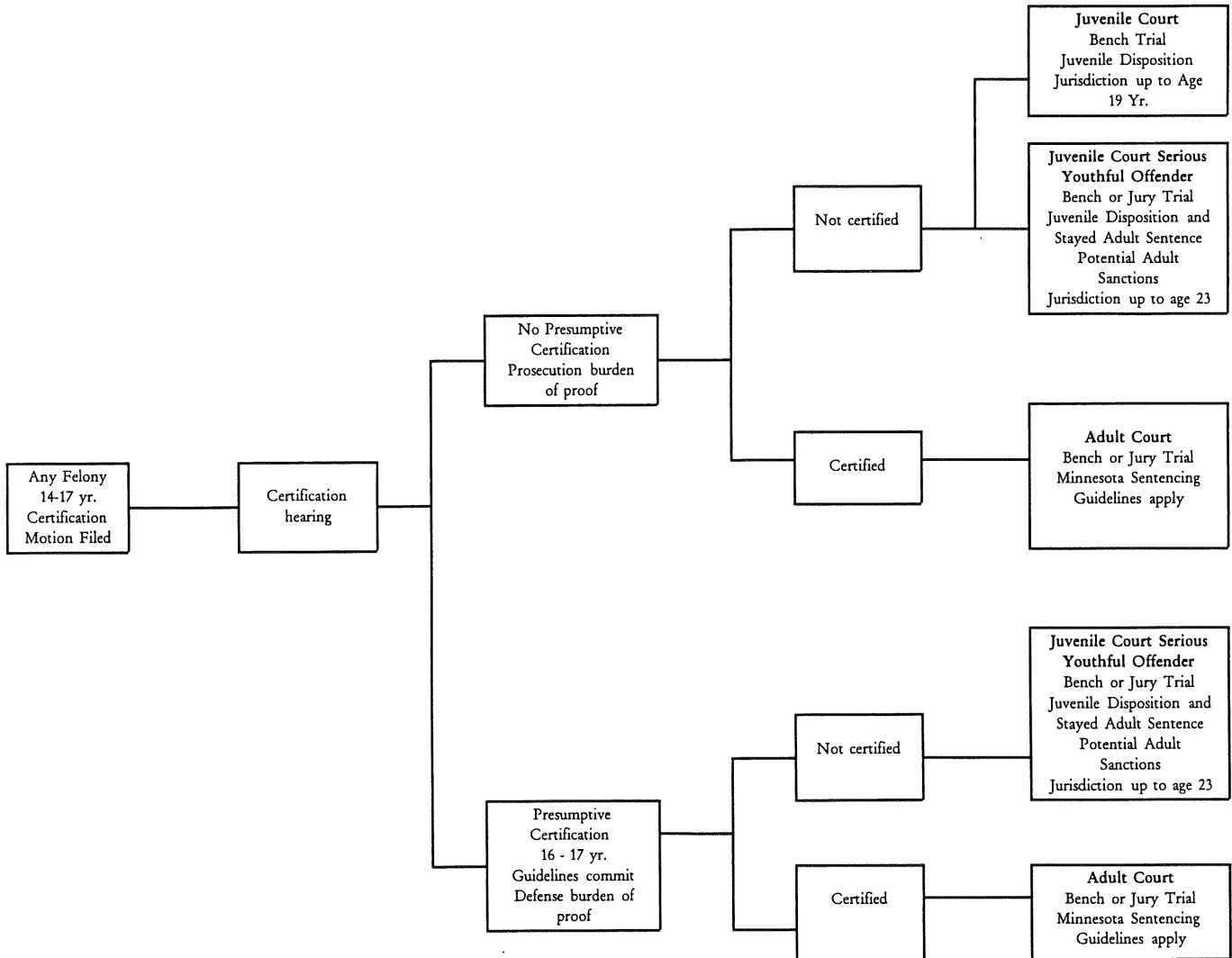
⁹²Currently, the presumptive commit to prison offenses under the guidelines are those offenses that are a level seven severity and above. Level seven offenses and above include offenses such as: Second Degree Murder, Third Degree Murder, First Degree Assault, First Degree Criminal Sexual Conduct, and Aggravated Robbery. Minnesota Sentencing Guidelines, § IV Sentencing Guidelines Grid (1992).

court designate the juvenile as Serious Youthful Offender.

Flow Chart of the Recommended Certification Process

The following flow chart describes the recommended certification process.

Juvenile Certification Proposal



Recommendations

1. The current certification law applies to all offenses; felony, gross misdemeanor, misdemeanor and petty. The Legislature should provide that the new certification process will apply only to felonies.
2. The current criteria for certification is: ". . . the child is not suitable to treatment or that the public safety is not served under the provisions of laws relating to juvenile courts." The Legislature should provide that the current criteria for certification will be changed to reflect public safety as the major concern in determining whether a juvenile should be placed in the Serious Youthful Offender category or sent to adult court. The following factors should be considered by the court in making the determination:
 - a. Seriousness of present offense
 - b. Culpability of juvenile
 - c. Prior record of delinquency
 - d. Prior program history
 - e. Dispositional options
3. Under current law counsel can be waived. The Legislature should provide that under the new certification process counsel will be appointed, or if waived there must be stand-by counsel available at all times.
4. The Legislature should provide that when a certification motion is filed in juvenile court and the juvenile is charged with First Degree Murder, the case will be presented to the grand jury for consideration of indictment within 14 days of the filing of the juvenile petition.
5. Under current law there are a number of prima facie criteria. The Legislature should provide that the prima facie criteria will be replaced with a system of presumptive certification. Presumptive certification will apply to juveniles:
 - a. 16 or 17 years old at the time of the offense,
 - b. when the charging offense is a felony offense that if charged as an adult would be a presumptive commitment to prison under the Minnesota Sentencing Guidelines, and
 - c. at the probable cause hearing the court must review the petition to see if there is probable cause for the offense and criteria a and b are met.

If all three criteria are met the burden of proof shifts to, and stays with, the juvenile to show by clear and convincing evidence that the juvenile is suitable for treatment within the juvenile system consistent with public safety or should be handled as a Serious Youthful Offender and retained in juvenile court.

6. The burden of proof, under current law, is always on the prosecution.⁹³ The Legislature should provide that under the new certification process the burden of proof will remain on the prosecution for regular certifications and will be shifted to the defense for presumptive certifications.
7. The Legislature should provide that the certification hearing will be held within 30 days of the filing of the motion. This may be extended, for good cause, to a maximum of 90 days.
8. The Legislature should provide that at the end of the certification hearing the court will have three options:
 - a. deny the motion and keep the juvenile in juvenile court,
 - b. deny the motion, designate the juvenile as a Serious Youthful Offender and keep the Serious Youthful Offender in juvenile court,or
 - c. grant the motion and refer the certified adult to adult court for trial.

If the juvenile meets the criteria for presumptive certification, at the end of the certification hearing the court will have two options:

- a. deny the motion, designate the juvenile as a Serious Youthful Offender and keep the Serious Youthful Offender in juvenile court,or
 - b. grant the motion and refer the certified adult to adult court for trial.
9. The current procedure of appealing certification decisions immediately after the decision will not be changed. The Minnesota Supreme Court Advisory Committee on the Rules of Juvenile Procedure should provide that the current time standard, the same as that of post conviction criminal appeals, be changed and the pretrial appeal time standards for appeal will apply.
10. The Minnesota Supreme Court Advisory Committee on the Rules of Juvenile Procedure should revise the Rules to be consistent with these recommended statutory changes, including revision of Rule 32.05 referred to as the a. through k. factors.

⁹³ Under current prima facie law the defense has the burden of producing evidence of treatability to rebut a prima facie case but the defense never has the burden of proof.

II. Serious Youthful Offender - A New Category

Although Minnesota's overall crime rate is decreasing, its serious crime rate is increasing and the number of juveniles apprehended for serious crimes is increasing.⁹⁴ It is particularly disturbing that the number of juvenile apprehensions for serious crimes in 1991 accounted for 43 percent of the total number of arrests/apprehensions for serious crimes in Minnesota.⁹⁵

As disturbing as these figures are, it is important to note that juvenile apprehensions for the violent crimes of Homicide, Negligent Manslaughter, Rape, Robbery, and Aggravated Assault accounted for only 6 percent of all juvenile apprehensions in 1991.⁹⁶ In addition, indications are that it is a relatively small number of juveniles who are committing the increasing proportion of the serious and violent crime.

The objective of a separate juvenile justice system is to provide youth from the age of 10 through 17 with the opportunity to receive programming that meets their needs and appropriate consequences for their delinquent behavior. For the majority of juveniles, this means programming and consequences quite different than those provided for adults. The individualized juvenile disposition is based upon the belief that juveniles are different than adults and it is appropriate to give juveniles the opportunity to change their behavior without permanent consequences as the result of youthful error.⁹⁷

The Task Force found that for the majority of delinquent juveniles the juvenile justice system works well. However, in the opinion of the Task Force the protection built into the juvenile justice system was never intended to shield those who choose to commit serious criminal behavior from full responsibility for their acts.

There are juveniles who are not readily susceptible to being deterred from serious criminal acts or rehabilitated. These are the young criminals who commit the vast majority of the serious juvenile offenses. It is here that energies must be concentrated so that programming is developed to care for and discipline these offenders in a manner that will address the major source of serious and repeat juvenile crime.⁹⁸

Youthful violence presents a serious challenge to the state. As such it demands a serious response. If that response is to be effective – it must be well considered. Minnesota needs a

⁹⁴Between 1980 and 1991 the overall crime rate in Minnesota decreased 4 percent. During that same period, the serious crime rate increased by 4 percent. The number of juveniles apprehended for serious crimes increased 10 percent between 1980 and 1991. Overview of Juvenile Crime in Minnesota, supra note 10, at 4-6.

⁹⁵Id. at 6.

⁹⁶There were 1,383 apprehensions for these crimes in 1991. Minnesota Criminal Justice Statistical Analysis Center, Minnesota Planning, Minnesota Arrests 1991 State Totals (1992).

⁹⁷The first national survey on public attitudes toward juvenile crime indicated that while there is support for trying juveniles who commit serious crimes, particularly felonies, in the adult courts, the public does not favor giving juveniles the same sentences as adults or sentencing juveniles to adult prisons. Sixty-two percent of the respondents did not feel that juveniles should receive the same sentences as adults. Sixty-three percent did not want juveniles sent to adult prisons for serious property crimes and 68 percent did not want juveniles imprisoned with adults for selling large amounts of drugs. Fifty-five percent did not feel that juveniles should be sent to adult prison for serious violent crimes. I. Schwartz, Juvenile Justice and Public Policy Toward a National Agenda 216 (1992).

⁹⁸C. Springer, Rehabilitating the Juvenile Court, V Notre Dame J. of L., Ethics & Pub. Pol'y 397, 417 (1991).

juvenile court that has the authority and the resources to deal with serious and repeat juvenile offenders. The response of the current juvenile justice system must be strengthened. This response should be designed to target the most serious and repeat juvenile offenders and provide both control of the offender for the public safety, and intensive programming to decrease the likelihood of the juvenile reoffending.

The Task Force agreed that an effective juvenile justice system is one that combines accountability and sanctions with increasingly intensive treatment and rehabilitation services as the seriousness of the offense increases. As a result, the Task Force developed a plan for a more graduated juvenile justice system based on age and offense with a new transitional component between the juvenile and adult systems. The goal of the Task Force was to address the lack of dispositional options for serious and repeat juvenile offenders, while not effecting the elements of the current juvenile justice system that are successful.

The Current Law and Process

The current age jurisdiction of juvenile court is 10 through 17 years of age. All offenses committed before a person's 18th birthday are handled in juvenile court. No offenses are excluded from the juvenile court's jurisdiction.

Once adjudicated delinquent, the juvenile court may order a variety of dispositions. The court may give multiple dispositions on one petition. The potential dispositions include fines, probation, counseling, placement out of the home in a residential or treatment facility, loss of driver's license, restitution or community work service, or placement in a state or local juvenile correctional facility.⁹⁹ Juveniles are not placed in adult facilities.

The dispositions are indeterminate and can be modified by the court. The juvenile court can retain jurisdiction over the juvenile as long as necessary, until the individual's nineteenth birthday.¹⁰⁰

In Minnesota, the only way a juvenile age 14 through 17 is excluded from the jurisdiction of the juvenile court is through the certification process. The prosecution has the discretion to file a motion for certification on any juvenile who is at least 14 years of age and is alleged to have committed an offense. The juvenile court has broad discretion to determine whether or not to certify the juvenile for prosecution in adult court. If the juvenile is not certified the juvenile court retains jurisdiction.

A Stronger Response to Serious and Repeat Offenders

The Task Force has developed a plan for a more graduated juvenile justice system that establishes a new transitional component between the juvenile and adult systems. The Task Force is recommending that the current age and offense jurisdiction of the juvenile justice system be retained, but that a new legal category of juvenile be established – the Serious

⁹⁹Minn. Stat. § 260.185, subd. 1 (1992).

¹⁰⁰Minn. Stat. § 260.181, subd. 4 (1992).

Youthful Offender.¹⁰¹

The Task Force intends that this new category will create viable new dispositional options for juvenile court judges facing juveniles who have committed serious or repeat offenses. It will give the juvenile one last chance at success in the juvenile system, with the threat of adult sanctions as an incentive not to reoffend. The juvenile court, for a Serious Youthful Offender, will be very similar to adult court, with the exception that juvenile treatment would be available.

The Task Force recommends that Serious Youthful Offenders remain under the jurisdiction of the juvenile court for offenses committed before age 18. Currently, the juvenile court loses jurisdiction on the offender's 19th birthday. At that point the offender must be discharged from any custody, probation, or treatment whether or not the offender has completed treatment or still poses a risk to public safety. In order to increase the length of the probationary and treatment period for Serious Youthful Offenders, the Task Force recommends the jurisdiction of the juvenile court for this category be extended up to age 23. The Task Force also recommends that probation supervision of a Serious Youthful Offender be transferred from juvenile probation to adult probation at the age of 19.

A minority opinion within the Task Force felt the jurisdiction of the juvenile court should be extended to age 21. Concern was expressed that extending the jurisdiction to age 23 created too lengthy an exposure for juveniles in which they could reoffend. Concern was also expressed that the adult criminal system may be overwhelmed if large numbers of juveniles reoffend and have their adult sentences executed.

It is possible that extending jurisdiction of the juvenile court for Serious Youthful Offenders to age 23 will have the impact of making certification to adult court more difficult due to the increase in treatment time available. However, the Task Force anticipates significant use of the Serious Youthful Offender category for serious and repeat offenders, who may not otherwise be certified under current law. The use of this category will result in an overall increase of significantly stronger consequences for serious and repeat offenses. In addition, the certification process is still a viable option for juveniles that are simply inappropriate for disposition in the strengthened juvenile system.

In selecting age 23 as the extended jurisdiction for Serious Youthful offenders, the Task Force noted that age 23 would be consistent with the statute that requires mandatory five year probation for sex offenders. In addition, the Task Force calculated that the average adult sentence for severity level seven and above crimes under the Minnesota Sentencing Guidelines for a 16 or 17 year old offender would require jurisdiction of the juvenile court to approximately age 23.

Serious Youthful Offenders would receive an adult sentence for their offense, which would initially be stayed, and a juvenile disposition would be ordered. This category would give the public the best of both systems. The juvenile court would retain access to juvenile programming, and would have the availability of adult sanctions if the program is not

¹⁰¹The Serious Youthful Offender concept was endorsed by the Youth Task Force on Juvenile Justice. Attorney General's Office, Youth Task Force on Juvenile Justice, Draft of Final Report (Jan. 1994).

successful.¹⁰² The Task Force is recommending that commitment to the state, or placement in a physically secure setting not be a requirement of Serious Youthful Offender placement. Testimony indicated that there are many serious and repeat offenders that can be handled effectively by the resources available to the county. The county should not be required to defer to the state.

The Task Force recommends that if a Serious Youthful Offender commits a new offense or a probation violation, the court will treat the Serious Youthful Offender in the same manner as adults are treated on subsequent offenses or probation violations, including being subject to the execution of the stayed adult sentence. Juveniles will know there is a certainty of punishment, combined with an opportunity to be successful in the juvenile system.

Once juveniles are designated as Serious Youthful Offenders, their offenses will no longer be protected from use in their criminal records as adults. The Task Force recommends that Serious Youthful Offender convictions carry the same weight as similar adult convictions should the offender be sentenced for an adult crime in the future. Unlike the current system, Serious Youthful Offender convictions will become a part of the Serious Youthful Offender's adult criminal record.

Implementing a significantly more severe juvenile justice system response, including the potential of an adult sanction, will require extending a mandatory right to counsel and the option of a jury trial to juveniles designated as Serious Youthful Offenders.

After significant discussion, the Task Force recommends that there be two options available for designating a juvenile as a Serious Youthful Offender. The first option would apply to juveniles who were age 14 through 17 at the time of committing a felony offense. The prosecution would have the discretion to file a motion to certify the juvenile for adult prosecution. The prosecution will have the discretion to file a motion to certify on repeat as well as serious felony offenders. In this way, repeat felony offenders who would not normally be certified under current law can be designated Serious Youthful Offenders.

At the conclusion of the certification hearing the court could designate the juvenile a Serious Youthful Offender. Currently, the court must either certify the juvenile as an adult or retain the juvenile in the juvenile system. The Serious Youthful Offender category will add significantly to the disposition/sentencing alternatives available to the juvenile court.

The second option would allow the prosecutor to designate the juvenile as a Serious Youthful Offender on the charging petition. This designation could apply to juveniles 16 or 17 years of age at the time of the offense, who are charged with a felony offense that, if they were an adult, would be a presumptive commitment of prison offense under the Minnesota Sentencing Guidelines.¹⁰³ If it is later determined that the offense at plea or conviction is less serious than originally charged, the designation would be removed and the offender returned to regular juvenile status for disposition.

This second option of prosecutor designation, would greatly enhance the juvenile justice system's response to serious and repeat juvenile offenders. The prosecutor designation option

¹⁰²Current federal law and state licensing rules prohibit the placement of a juvenile who has been certified as an adult into a juvenile program.

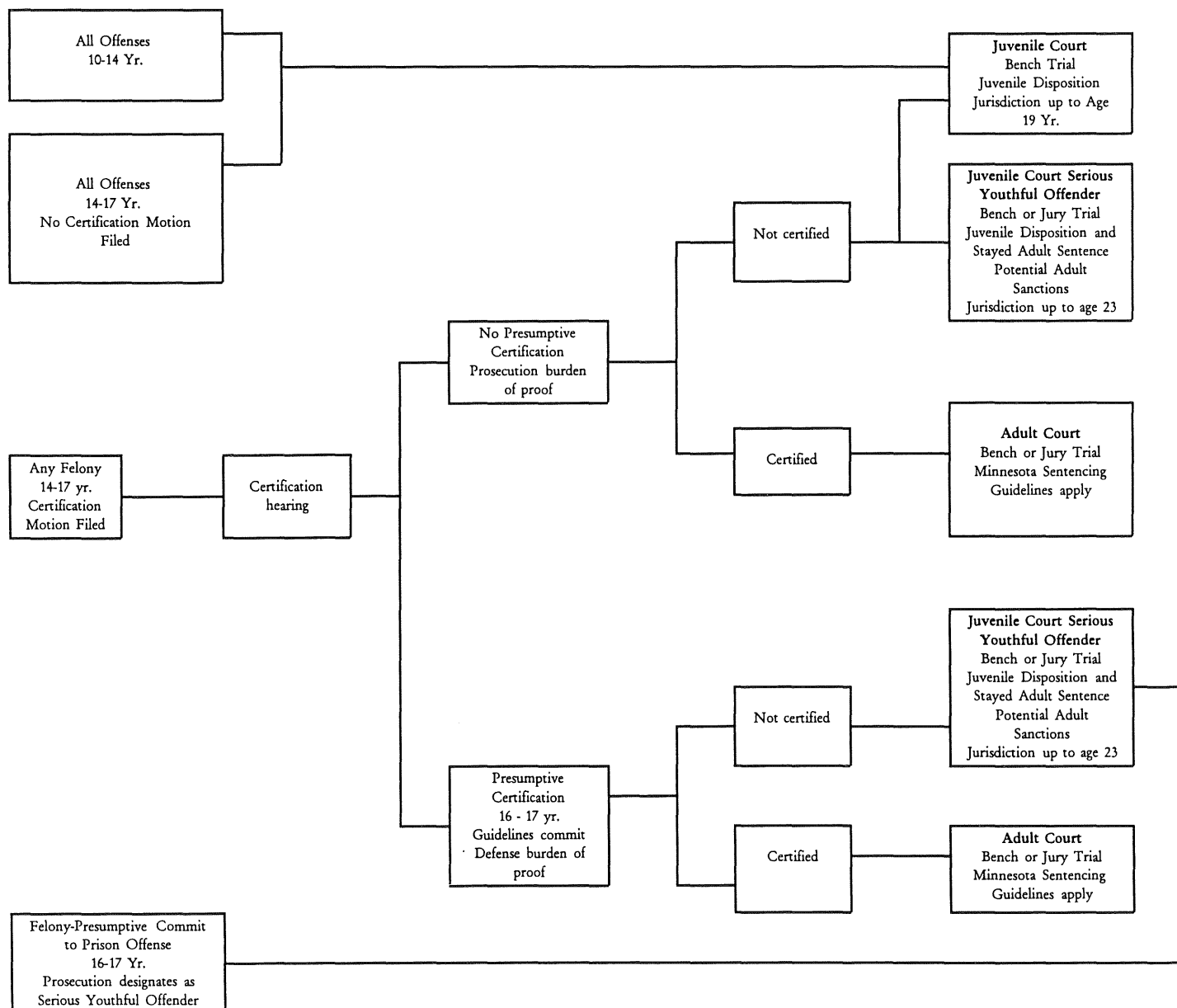
¹⁰³Offenses that are currently presumptive commit to prison offenses are Second Degree Murder, Third Degree Murder, First Degree Assault, First Degree Criminal Sexual Conduct, and Aggravated Robbery. Minnesota Sentencing Guidelines, § IV Sentencing Guidelines Grid (1993).

will make it possible for older juveniles who commit violent person offenses to be designated as Serious Youthful Offenders in an expedient manner.

Flow Chart of Serious Youthful Offender Category

The following flow chart describes the new Serious Youthful Offender category.

Juvenile Certification and Serious Youthful Offender Proposal



Recommendations

1. The Legislature should provide for a new category of juveniles within the juvenile justice system, called the Serious Youthful Offender category. The category of Serious Youthful Offender would add to the dispositional alternatives available to the juvenile court. A juvenile could be placed in the Serious Youthful Offender category by one of two ways:
 - a. The juvenile –
 - i. is 14 through 17 years of age at the time of the offense, and
 - ii. is designated by the court as a Serious Youthful Offender after a certification hearing.or
 - b. The juvenile –
 - i. is 16 or 17 years of age at the time of the offense,
 - ii. is charged with a felony offense that if charged an adult would be a presumptive commitment to prison under the Minnesota Sentencing Guidelines, and
 - iii. the prosecutor has designated, in the charging petition, that the juvenile is a Serious Youthful Offender.
 - iv. If it is later determined that the offense at plea or conviction is not a presumptive commit to prison offense, the Serious Youthful Offender designation would be removed and the juvenile returned to regular juvenile status for disposition.
3. The current limit on juvenile court jurisdiction, up to age 19, should not be changed except for juveniles who have been designated as Serious Youthful Offenders. The Legislature should extend the juvenile court jurisdiction for a Serious Youthful Offender up to age 23.

Minority Position: The Legislature should extend the juvenile court jurisdiction for a Serious Youthful Offender up to age 21.
4. The Legislature should provide that designation of a juvenile as a Serious Youthful Offender results in the following:
 - a. The right to a jury trial will be provided in juvenile court.
 - b. The effective assistance of counsel will be provided through appointment of counsel, and if waived stand-by counsel will be appointed.
 - c. The jurisdiction of the juvenile court will be extended up to 23 years of age. The juvenile court could discharge the offender from probation earlier than age 23. The length of probation should not extend beyond the statutory maximum for the same

offense if it had been committed by an adult.

- d. Serious Youthful Offenders would remain under the jurisdiction of the juvenile court. They would receive an adult sentence for their offense, which would initially be stayed, and a juvenile disposition would be ordered. The effect of mitigating and aggravating factors would be considered at sentencing.
- e. If a Serious Youthful Offender is alleged to have committed a new offense, or is alleged to have violated the terms of probation, the court will treat the Serious Youthful Offender in the same manner as adults are treated on subsequent offenses or probation violations, including being subject to the execution of the adult stayed sentence.
- f. All juvenile court hearings where a juvenile has been designated as a Serious Youthful Offender will be open to the public.
- g. Where there is a designation as a Serious Youthful Offender any admission or finding of proven will result in the same criminal history points for the Minnesota Sentencing Guidelines as a similar adult conviction.
- h. Any juvenile placed in a physically secure juvenile program as a Serious Youthful Offender will receive credit for that time if there is ever a commitment to prison for a probation violation.

III. Use of Juvenile Offense History in Adult Sentencing

Upon reaching age 18, individuals make the transition from the juvenile justice system to the adult criminal system. This transition occurs during what are probably the peak years of criminal activity – ages 16 to 23.¹⁰⁴ When chronic serious juvenile offenders become adults at age 18, and are convicted of a crime in adult court, their prior juvenile offense history has minimal impact upon the adult sentence they receive.

Current Law Regarding Juvenile Offense History

It is not that information regarding a young adult's prior juvenile offense history is unavailable to the adult court. The juvenile court has the authority to provide juvenile records to requesting adult courts and generally does. The retention and subsequent adult court use of juvenile records is governed by statute.¹⁰⁵ By statute, the juvenile court is required to maintain records pertaining to delinquent adjudications until the person reaches age 23, and to release the records to another juvenile court or to a requesting adult court for purposes of sentencing.¹⁰⁶ The use of the juvenile offense history was included in the adult sentencing guidelines to identify those young adult felons whose criminal careers were preceded by repeated felony-type offenses committed as a juvenile.¹⁰⁷

The Minnesota Sentencing Guidelines, which the court must use to calculate the sentences for adult felony offenders, limit the impact of prior juvenile offense history on subsequent adult sentences. During the process of developing the guidelines, the Minnesota Sentencing Guidelines Commission recognized the lack of due process protection accorded juveniles in the juvenile system and chose to limit the effect of prior juvenile offense history on adult sentencing.¹⁰⁸

The Commission reasoned that since juvenile court proceedings do not afford the full procedural rights available in adult courts, and since different procedures and safeguards would make the full use of juvenile adjudications unfair, the use of prior juvenile adjudications in adult criminal history scores should be limited. Specifically, the Commission required two felony-level juvenile adjudications for each adult criminal history point, and limited or capped the total number of criminal history points that prior juvenile adjudications may add to an adult criminal history score.¹⁰⁹ The Commission also limited the use of prior juvenile offense history to individuals who committed the adult offense for which they are being sentenced prior to attaining age 21.¹¹⁰

¹⁰⁴Petersilia, Juvenile Record Use in Adult Court Proceedings: A Survey of Prosecutors, 72 J. Crim. L. & Criminology 1746, 1746 (1981).

¹⁰⁵Minn. Stat. § 260.161, subd. 1 (1992).

¹⁰⁶Id.

¹⁰⁷Minnesota Sentencing Guidelines, Comment II.B.401.

¹⁰⁸Id. at Comment II.B.405.

¹⁰⁹Id. at II.B.4.

¹¹⁰Id. at II.B.4(d).

Currently, juvenile felony adjudications may be used in the adult criminal history score for the purpose of adult sentencing if the following conditions are met:

1. There was a proper adjudication of the juvenile offenses;
2. The juvenile offenses occurred after the offender's sixteenth birthday;
3. The offender was under 21 years of age at the time the adult felony was committed;
4. No offender may receive more than one criminal history point for juvenile adjudications, unless certain violent offenses are involved; and
5. No offender may ever receive more than two criminal history points for juvenile adjudications.¹¹¹

Currently, the adult offender is assigned one criminal history point for every two offenses committed and prosecuted as a juvenile that would have been felonies if committed by an adult.¹¹² Therefore, receiving one criminal history point as a young adult offender would require two felony level adjudications for offenses committed after reaching the age of sixteen.

In addition, no adult offender may receive more than one criminal history point for offenses committed and prosecuted as a juvenile unless at least one of the offenses is Murder, Assault in the first or second Degree, Criminal Sexual Conduct in the First, Second, or Third Degree or Aggravated Robbery involving a dangerous weapon.¹¹³ In addition, no offender may receive more than a total of two points for offenses committed and prosecuted as a juvenile.¹¹⁴ No adult criminal history points are given for any additional felony adjudications as a juvenile, before or after age 16, regardless of their number or seriousness.

Increasing the Use of Juvenile Offense History

The Task Force supports the Sentencing Guidelines Commission's position that juvenile adjudications should continue to have only limited use in the adult system, when full due process is not accorded the juvenile and it is not required that the juvenile receive effective assistance of counsel. However, the Task Force recognizes that the juvenile justice system has the unique opportunity to identify the small proportion of individuals who are committing a disproportionate amount of serious crime.

Evidence points to an individual's juvenile record as one of the most reliable indicators that he or she is engaging in a high rate of criminal activity when arrested as a young adult.¹¹⁵ In order to strengthen the juvenile justice system's response to serious and repeat juvenile offenders, the Task Force recommends that they be designated as Serious Youthful Offenders and as such receive full due process rights.

Ensuring full due process rights for juveniles designated as Serious Youthful Offenders will

¹¹¹Id. at II.B.4.

¹¹²Id. at II.B.4.

¹¹³Id. at II.B.4.(e).

¹¹⁴Id. at II.B.4.(e).

¹¹⁵Petersilia, Juvenile Record Use in Adult Court Proceedings: A Survey of Prosecutors, 72 J. Crim. L. & Criminology 1746, 1747 (1981).

allow unlimited use of their juvenile adjudications in their adult criminal history scores should they continue to commit crimes as adults. As an adult, the offender would be assigned one criminal history point for every Serious Youthful Offender felony adjudication. The number of criminal history points that an offender could receive on the basis of prior Serious Youthful Offender felony adjudications would not be limited. For Serious Youthful Offenders, the requirements that juvenile records be kept only until age 23, and that the adult offense must have occurred prior to the offender's 21st birthday would be eliminated. Serious Youthful Offender adjudications would be treated the same as adult convictions, and would become a permanent part of the offender's criminal history.

These changes would not impact any individual unless they were subsequently convicted of an adult felony. The protection that was intended for the majority of juveniles involved in the juvenile justice system who choose to change their behavior and become law-abiding as adults would be preserved.

These changes are intended to provide additional incentive for juveniles to change their behavior. Juveniles who are designated as Serious Youthful Offenders will not make the transition to the adult system with a "clean slate", nor will they have their juvenile records eliminated at age 23. As a result, there will be a transitional component linking the juvenile justice and adult criminal systems and more appropriate consequences will be forthcoming to those offenders who choose to continue to commit crimes as adults.

Recommendations

1. The Sentencing Guidelines Commission should provide that for the purpose of adult sentencing, Serious Youthful Offender adjudications are calculated in the same manner as adults.
2. For juveniles not designated as Serious Youthful Offenders, no change should be made in the current method of calculating adult criminal history points.

IV. Right to a Jury Trial

In delinquency cases where the juvenile is designated as a Serious Youthful Offender, and the juvenile court subsequently treats the juvenile similarly to an adult criminal, the Task Force recommends the extension of the right to a jury trial. As in adult criminal cases, the Task Force recommends that the Serious Youthful Offender have the option of requesting a trial by jury. The Serious Youthful Offender will also have the options of plea bargaining to avoid trial altogether, or having a trial before a judge without a jury.

The possibility of extending the right to a jury trial to all juveniles in delinquency cases was discussed extensively by the Task Force. However, the Task Force was concerned about the potential administrative burden of treating all juveniles like adult defendants. Concerns were also raised that such a broad based granting of jury trial rights to all juveniles may spur initiatives to abandon the juvenile justice system altogether and thus jeopardize portions of the juvenile justice system that are effective in handling the large majority of juvenile offenders.

The Current Law

Currently, juveniles in an adjudicatory hearing receive nearly all the constitutional rights and protections extended to adult defendants in a criminal proceeding, with the notable exception of the right to request a jury trial. In fact, Minnesota statutes specifically exclude the right to a trial by jury for juveniles. The Minnesota statute states, ". . . hearings on any matter shall be without a jury and may be conducted in an informal manner."¹¹⁶

The Minnesota statute is consistent with the United States Supreme Court decision in McKeiver v. Pennsylvania¹¹⁷ which held that juveniles do not have a constitutional right to a jury trial in delinquency proceedings. In McKeiver, the Court explained that "the juvenile court proceeding has not yet been held to be a 'criminal prosecution' within the meaning and reach of the Sixth Amendment" ¹¹⁸ Therefore, the Court found that the constitutional right to a trial by jury was inapplicable in juvenile court.

The Supreme Court's decision was based, in part, on the belief that juvenile courts differ significantly from adult criminal courts. The Court determined that in delinquency proceedings due process requires accurate fact finding, which can be accomplished though a trial to a judge without a jury.

Although there is no constitutional right to a trial by jury in delinquency proceedings, the McKeiver Court also held that its decision did not prohibit states from extending the right to jury trials in juvenile court through state case law or statute. The Court stated that granting jury trial rights to juveniles is "the State's privilege and not its obligation."¹¹⁹

¹¹⁶Minn. Stat. § 260.155, subd. 1 (1992).

¹¹⁷McKeiver v. Pennsylvania, 403 U.S. 528 (1971).

¹¹⁸Id. at 541.

¹¹⁹Id. at 547.

Minnesota does not currently grant jury trial rights to juveniles in any delinquency proceeding. In eleven states the right to jury trial is granted to all juveniles in delinquency proceedings by either case law or statute.¹²⁰ In addition, Illinois provides a right to jury trial only for habitual offenders, and in Kansas and South Dakota the juvenile judge may order a jury trial.¹²¹

The Impact of Extending the Right to Jury Trial to Juveniles

In order to assess the administrative impact of the extension of the right to jury trial to Serious Youthful Offenders in delinquency cases, the Task Force conducted a survey of the eleven states which provide the right to jury trial to all juveniles.¹²² Nine of those states responded, of which four were able to provide minimal statistics on the frequency of jury trials in delinquency cases.¹²³ It appears from the responses received that the right to a jury trial is seldom exercised by juveniles in delinquency proceedings. In Oklahoma, Texas and New Mexico, where juvenile jury trials are available in all delinquency proceedings, only one percent or less of the total juvenile delinquency dispositions were by jury trial.¹²⁴

Several members of the Task Force visited Dane County, Wisconsin to discuss with judges, prosecutors, public defenders, and other court personnel the impact of providing the option of a jury trial to juveniles in delinquency proceedings.¹²⁵ In general, there appeared to be little administrative difficulty with providing juries in juvenile court.¹²⁶ It was also emphasized, that there are very few juvenile delinquency proceedings that are actually disposed of by a jury trial.¹²⁷

Since there is little administrative burden experienced by the states that extend the right to a jury trial in all delinquency proceedings, the Task Force concluded that there would be minimal impact to the juvenile justice system in Minnesota by extending the right to a jury trial only to Serious Youthful Offenders.

¹²⁰Alaska, Colorado, Massachusetts, Michigan, Montana, New Mexico, Oklahoma, Texas, West Virginia, Wisconsin, and Wyoming.

¹²¹J. Sanborn, The Right to a Public Jury Trial: A Need for Today's Juvenile Court, 76 Judicature 230, 233 (Feb.-Mar. 1993).

¹²²The following eleven states were sent surveys: Montana, New Mexico, Oklahoma, Texas, Wisconsin, Wyoming, Alaska, Colorado, Massachusetts, Michigan and West Virginia.

¹²³Those states responding were Alaska, Massachusetts, Montana, New Mexico, Oklahoma, Texas, West Virginia, Wisconsin, and Wyoming. Those states which have juvenile jury trial statistics available are New Mexico, Oklahoma, Texas, and Wisconsin.

¹²⁴Oklahoma reported that in 1992, there were only 51 juvenile delinquency dispositions by jury trial out of 4,365 total juvenile dispositions. Texas reported that in 1992, there were 191 juvenile dispositions by jury trial out of 21,970 total dispositions. New Mexico reported that out of 4,359 juvenile criminal-type petitions, only 6 were disposed of by jury trial. Wisconsin reported that in 1992, not including Milwaukee County, the percentage of juvenile dispositions by jury trial was less than 3 percent, or 272 dispositions by jury out of 10,000 total dispositions. Minnesota Supreme Court, Survey on Juvenile Jury Trials (Nov. 3, 1993)(on file with the Minnesota Supreme Court).

¹²⁵In Wisconsin, jury trials may be requested by any juvenile involved in a delinquency proceeding.

¹²⁶See B. Feld, Summary Report of Wisconsin Juvenile Court Judges' Assessment of Juvenile Jury Trials (Sept. 3, 1993)(on file with the Minnesota Supreme Court); See also J. Sanborn, The Right to a Public Jury Trial: A Need for Today's Juvenile Court, 76 Judicature 230, 237 (Feb.-Mar. 1993) The author notes that where the right to jury trial has existed, it has been exercised rarely. Consequently, there is little to no administrative burden to granting juveniles this right.

¹²⁷In Wisconsin, exclusive of Milwaukee County, less than 3 % of the juvenile delinquency dispositions are by jury trial. In 1992, there were only 272 jury trials out of 10,000 total delinquency dispositions. Minnesota Supreme Court, Survey on Juvenile Jury Trials (Nov. 3, 1993)(on file with the Minnesota Supreme Court).

Rationale for Extending Jury Trial Rights to Serious Youthful Offenders

The vast majority of juvenile court cases deal with non-serious offenders whose dispositions involve nothing more restrictive than probation. The second largest group are those juveniles whose dispositions involve a relatively short time in residential placement. In all likelihood these juveniles will be exposed to essentially rehabilitative programming efforts.¹²⁸ Under the Task Force's recommendations neither of these groups of juveniles will qualify for jury trial rights.

The only group of juvenile offenders for which the Task Force is recommending the extension of a right to jury trial, is the group of juveniles designated as Serious Youthful Offenders. The power of the juvenile court, through the new Serious Youthful Offender category, to impose adult sanctions for acts committed by juveniles is integrally connected to the issue of juvenile jury trial rights. The right to a jury trial would be constitutionally required in order to execute an adult sanction should a Serious Youthful Offender commit a subsequent probation violation. In order to preserve the potential of executing a stayed adult sentence for Serious Youthful Offenders, they must have received the right to a jury trial on the juvenile petition that designated them as a Serious Youthful Offender.

Since Serious Youthful Offenders will receive special labeling, extended jurisdiction of the juvenile court, more severe sanctions, potential incarceration with adults, and the accumulation of a juvenile record which can be used in later adult sentencing, the extension of a right to a jury trial to Serious Youthful Offenders is critical.¹²⁹ The juvenile court for a Serious Youthful Offender will not differ fundamentally from an adult criminal court, and therefore the Task Force is clear that Serious Youthful Offenders must be afforded full due process rights and protections including the option of requesting a trial by jury.

Recommendation

1. The Legislature should extend the right to a jury trial to any juvenile who has been designated as a Serious Youthful Offender.

Minority Position: The Legislature should extend the right to a jury trial to all juveniles in delinquency proceedings.

Minority Report

A minority report was submitted by Task Force member Barry Feld, Professor of Law, University of Minnesota Law School. The minority report has been excerpted for presentation as follows. The full minority report is included in Appendix B.

Because young people brought to juvenile court are charged with crimes and face the prospect of coercive state intervention, they should receive the same criminal procedural safeguards as

¹²⁸See J. Sanborn, The Right to a Public Jury Trial: A Need for Today's Juvenile Court, 76 *Judicature* 230, 238 (Feb.-Mar. 1993).

¹²⁹Justice Byron White wrote in McKeiver, "States are free . . . frankly to embrace condemnation, punishment, and deterrence as permissible and desirable attributes of the juvenile justice system" However, Justice White also stated that states desiring to do this must "extend criminal court safeguards to juvenile court adjudications." McKeiver v. Pennsylvania, 403 U.S. 528, 553 (1971)(White, J., Concurring).

any other citizen, including the right to a jury trial. The justifications to deny juveniles this constitutional right are based on either an historical vision of an informal, rehabilitative juvenile court that is inconsistent with contemporary reality or political expediency that sacrifices the rights of young offenders.

More than 20 years ago, the U.S. Supreme Court in McKeiver v. Pennsylvania,¹³⁰ denied to juveniles charged with crimes a constitutional right to jury trials in state delinquency proceedings. The Court ruled that "fundamental fairness" in juvenile proceedings required nothing more than accurate fact-finding, an objective as easily attained by a judge as a jury. The Court in McKeiver departed significantly from its prior analyses in In re Gault,¹³¹ that juvenile court procedures serve two functions: to assure accurate fact-finding and to protect against government oppression.

The McKeiver Court was concerned that requiring jury trials would disrupt the traditional juvenile court and its adjudicative practices. The Court noted the potential adverse impact of jury trials on the informality, flexibility, and confidentiality of juvenile court proceedings. Yet the Court did not consider the possible advantages due to increased formality in juvenile proceedings. Most importantly, the McKeiver Court did not analyze the crucial distinctions between treatment in juvenile courts and punishment in criminal courts that justified different procedural safeguards for each forum.

Since McKeiver, both nationally and in Minnesota, there has been a strong movement, both in theory and in practice, away from therapeutic individualized dispositions toward an emphasis on public safety, the seriousness of a youth's offense, and social control. These changes in sentencing philosophy and practice call into question the underlying rationales of McKeiver that juvenile dispositions are benign and therapeutic, and that youths require fewer procedural safeguards than do adults charged with crimes.

Accurate Fact Finding Although the McKeiver Court asserted that there was parity between the factual accuracy of juvenile and adult adjudications, given the same evidence, a judge in juvenile court is more likely to convict a youth than would a jury of detached citizens in a criminal proceeding.

Jury and Preventing Governmental Oppression Importantly, McKeiver simply ignored that procedural safeguards help to prevent governmental oppression. In Duncan v. Louisiana,¹³² the Court held that fundamental fairness in adult criminal proceedings requires both factual accuracy and protection against governmental oppression. The Duncan Court identified the manifold benefits of a jury trial as "[p]roviding an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge."¹³³

These considerations are equally applicable in juvenile proceedings. They are especially pertinent in light of the changes in juvenile justice sentencing policy and the absence of

¹³⁰Id.

¹³¹In re Gault, 387 U.S. 1 (1967).

¹³²Duncan v. Louisiana, 391 U.S. 145 (1968).

¹³³Id. at 155-56.

evidence that juveniles derive any long term benefit from their sentences.

Jury Impact on Juvenile Justice Administration While opponents of jury trials in juvenile court argue that the right would substantially disrupt juvenile proceedings, there is nothing but speculation to support such an objection, as evidenced both by the ten states that provide juries in juvenile courts and empirical evaluations of their use. Researchers have found that the number of jury trials accounted for less than 2% of total volume of cases heard.¹³⁴ But, the theoretical availability of a jury provides an important practical safeguard for the overall quality of justice.

Juries and Justice The basic philosophical and jurisprudential question whether juveniles should have a right to a jury on a par with adults is ultimately a value judgment and not an empirical question. Providing jury trials acknowledges the punitive reality of juvenile justice as well as the need to provide safeguards against even benevolently motivated governmental coercion.

If their criminal conduct warrants, they will receive coercive sanctions regardless of whether or not they will be "better off" as a result of their sentence. Proponents of procedurally informal juvenile courts should demonstrate why juvenile justice procedures should not be structured like those of other institutions that administer punishment.

Use of Juvenile Prior Convictions in an Offender's Criminal History Score In addition to assuring that juveniles receive the assistance of counsel, the use of juvenile records to enhance adult sentences arguably hinges on the availability of a right to a jury.¹³⁵ There is a fundamental inconsistency in using less stringent procedures to obtain criminal convictions in the name of rehabilitation and then using those convictions to enhance subsequent sentences.

Jury trial for 16 and 17 year old juveniles charged with a felony offense. The decision whether to increase the sanctioning power of juvenile courts under the "Youthful Offender" provision is strongly tied to the availability of juries. The right to a jury trial is a constitutional prerequisite to a Youthful Offender provision. In order to preserve the possibility of adult confinement in the event that a Youthful Offender fails on probation, youths 16 or 17 years old and charged with presumptive commit to prison offenses must receive the right to a jury trial.

Even the recommendation to provide a jury only to juveniles 16 or older and charged with felonies compromises the principle that people charged with crimes and facing coercive intervention require constitutional procedural safeguards. Two previous Minnesota Juvenile Justice Task Forces in 1981 and 1986 considered the right to a jury trial in juvenile court and concluded that there was no principled reason for differences in juvenile and adult procedures.

¹³⁴Burch and Knaup, The Impact of Jury Trials Upon the Administration of Juvenile Justice, 4 Clearing House Rev. 345, 358 (1970).

¹³⁵See e.g. Dormont, For the Good of the Adult: An Examination of the Constitutionality of Using Prior Juvenile Adjudications to Enhance Adult Sentences, 75 Minn.L.Rev. 1769, 1793-94 (1991).

V. Right to Counsel

Minnesota statutes and rules already provide that juveniles must be adequately advised of their constitutional right to counsel, and should they decide to waive their right to counsel, they must do so voluntarily and intelligently. However, the informal process associated with the juvenile court often results in large numbers of juveniles waiving their right to counsel and facing charges without legal representation.

Concerned that the current juvenile justice system may not adequately protect the constitutional rights of these young people, the Task Force recommends that the appointment by the court of counsel or stand-by counsel be required for juveniles charged with a felony, a gross misdemeanor, or for whom out of home placement is proposed. The Task Force further recommends that consultation with counsel prior to a decision to waive the right to be represented by counsel or enter a plea to the petition be mandatory in all delinquency proceedings.

The Current Law

The Right to Counsel

In 1967, the United States Supreme Court held that juvenile offenders were entitled to the assistance of counsel in juvenile delinquency proceedings.¹³⁶ Minnesota statutes also provide for the provision of counsel to juveniles. The statute states that in a delinquency proceeding "[t]he minor, parent, guardian or custodian have the right to effective assistance of counsel."¹³⁷ In addition, Minnesota law provides that "[i]f they desire counsel but are unable to employ it, the court shall appoint counsel to represent the minor or the parents or guardian in any other case in which it feels that such an appointment is desirable."¹³⁸

The Minnesota Rules of Juvenile Procedure also state that the child has a right to be represented by an attorney who shall act as the child's counsel.¹³⁹ In addition, the Rules express a concern that the juvenile fully understand this right by providing that a child not represented by counsel shall be advised orally by counsel, who shall not be the county attorney, or orally by the court on the record of the right to counsel at or before any hearing on a petition.¹⁴⁰ This Rule assumes that the required advisory regarding the right to counsel is only adequate if it is given by a non-adversarial attorney, or if there is no consultation with an attorney, by the judge on the record.

¹³⁶In re Gault, 387 U.S. 1 (1967).

¹³⁷Minn. Stat. § 260.155, subd. 2 (1992).

¹³⁸Id.

¹³⁹Minn. R. Juv. P. 4.01, subd. 1.

¹⁴⁰Minn. R. Juv. P. 4.01, subd. 2; See also In re Welfare of D.S.S., No. CO-93-497 (Minn. Ct. App. filed Sept. 27, 1993). The court held that a juvenile that had received notice of his right to counsel from a written statement of rights and from a social worker was not adequately advised of his right to counsel. As a result, the subsequent waiver of right to counsel was deemed to be not knowing, voluntary, and intelligent as required. Id. at 9.

The Rules also provide for the provision of counsel in the instance when the parent or child cannot afford to retain counsel. In such cases, the child is entitled to representation by counsel at the public expense.¹⁴¹ If the parents do not retain counsel for the child even though they can afford to retain counsel in whole or in part, the child is entitled to representation at the public expense.¹⁴²

Waiver of the Right to Counsel

Minnesota statute states that a juvenile's waiver of the right to be represented by counsel must be an express waiver voluntarily and intelligently made by the child after the child has been fully and effectively informed of the right being waived.¹⁴³ The statute further states that in order to determine if the juvenile has voluntarily and intelligently waived the right to counsel, that the court shall look to the totality of the circumstances which includes but is not limited to the juvenile's age, maturity, intelligence, education, experience, and ability to comprehend. The court may also consider the presence and competence of the juvenile's parents, guardian, or guardian ad litem.¹⁴⁴ If the court accepts the juvenile's waiver, the court is required to state on the record the findings and conclusions that formed the basis for its decision to accept the waiver.¹⁴⁵

The Rules of Juvenile Procedure also address the waiver of the right to counsel. The Rules parallel the language of the statute, but add a renewal requirement. The renewal requirement in the Rules states that after a juvenile waives the right to counsel the child must be advised of the right to counsel, by the court, on the record, at the beginning of each hearing at which the child is not represented by counsel.¹⁴⁶

Current Rates of Representation

Even though there is a constitutional right to counsel¹⁴⁷ and the Minnesota law and rules provide for the right to counsel for all juveniles, the actual delivery of legal services in Minnesota's juvenile courts is often inadequate. In 1990, the Supreme Court's Juvenile Representation Study Committee examined the delivery of legal services and found that less than half of Minnesota's juveniles were represented by counsel in 1988. The Study Committee also noted that the absence of counsel is especially serious in rural counties where only one quarter of juveniles receive the assistance of counsel.

For many of Minnesota's juveniles facing a delinquency hearing, the promise of a constitutional

¹⁴¹Minn. R. Juv. P. 4.01, subd. 3 (A).

¹⁴²Minn. R. Juv. P. 4.01, subd. 3 (B).

¹⁴³Minn. Stat. § 260.155, subd. 8(a), (b) (1992).

¹⁴⁴Minn. Stat. § 260.155, subd. 8 (b) (1992).

¹⁴⁵Id.

¹⁴⁶Minn. R. Juv. P. 15.02, subd. 2.

¹⁴⁷In re Gault, 387 U.S. 1 (1967).

right to counsel remains elusive. Available statistics indicate juveniles in Minnesota continue to be unrepresented by an attorney at adjudication hearings.¹⁴⁸ In 1992, of the delinquency petitions disposed of statewide, in approximately 50 percent of the cases the juveniles were not represented by an attorney at the adjudication hearings.¹⁴⁹

There continues to be enormous variations between counties in the rates of representation. In 1992, the rates of representation ranged from seven counties reporting less than ten percent of all the delinquency petitions having an attorney present at adjudication, to four counties reporting a 98 to 100 percent representation rate.¹⁵⁰

As one would expect, the more serious delinquency cases have a slightly higher rate of representation. In felony cases the statewide rate of representation increases to 59 percent. Gross misdemeanors had a 51 percent representation rate, and misdemeanors had a 44 percent representation rate.¹⁵¹

Often adjudications of delinquency are used in subsequent delinquency proceedings to increase the severity of the disposition, or in later adult criminal cases to enhance the sentence. However, in 1992 half Minnesota's juveniles facing disposition by the court never saw an attorney, and often waived their right to legal representation without consulting with an attorney or fully appreciating the consequences of waiving their rights.

Strengthening the Right to Counsel at Trial Court Level

The existence of a right to counsel is not the issue, for the right to counsel at every critical stage of the proceedings already exists. The issue that concerned the Task Force was the practical matter of how this right is protected on a day to day basis in the juvenile court system. The role of the defense counsel is not only to help ensure that the adjudication process is fair and valid; the defense counsel also presents dispositional alternatives to the court. Essentially, the Task Force found that the waiver of counsel process and advisories varied greatly throughout the state.

As a result, the right to counsel for juveniles in delinquency proceedings may have little meaning due to the fact that they often have little understanding of their full procedural rights.¹⁵² In order to ensure that the right to counsel is properly protected in serious cases the Task Force recommends that the appointment of counsel, or if effectively waived stand-by counsel, be mandatory for juveniles charged with felonies, gross misdemeanors, or for whom out-of-home placement is proposed. This process will also assure the validity of prior juvenile adjudications when used to determine either more severe dispositions as a juvenile or to enhance adult sentences.

¹⁴⁸An adjudication hearing in a delinquency proceeding is similar to an adult criminal trial. It is at the adjudication hearing that the guilt or innocence of the juvenile is determined by the court.

¹⁴⁹S. Krmpotich, Minnesota Supreme Court, 1991-92 Attorney Representation Rates (1993).

¹⁵⁰Id.

¹⁵¹Id.

¹⁵²B. Feld, Criminalizing Juvenile Justice: Rules of Procedure for the Juvenile Court, 69 Minn. L. Rev. 141, 174-75 (1984).

In less serious cases, the Task Force recommends that for juveniles charged with misdemeanors, in person consultation with a defense attorney be mandatory prior to the juvenile being permitted to waive the right to legal representation or to enter a plea to the petition. The Task Force is recommending that the defense counsel be present in court during the waiver process. The court will not be required to appoint counsel in misdemeanor cases, or to appoint stand-by counsel should the juvenile decide to waive representation after the consultation.

When the defense counsel is consulting with the juvenile, procedural mechanisms should be developed to assure that juveniles receive an adequate advisory from counsel prior to entering a waiver and that such waivers are truly knowing intelligent and voluntary. The advisory should be given in language the juvenile can understand and should, among other things, explain the court process and the potential consequences of an adjudication of delinquency. To this end, the Task Force recommends that a uniform advisory be developed that can be used statewide to inform the juveniles and their parent(s) or guardian(s) of their respective rights and the potential ramifications of an adjudication of delinquency.

The Task Force was concerned that the parent(s) or guardian(s) involvement in the decision to waive counsel or to enter a plea to the petition be clear. Therefore, the Task Force recommends that procedures should be established through the Rules of Juvenile Procedure that clarify the roles of all parties to the defense attorney consultation.

This required consultation is expected to have additional preventative benefits. The defense attorney consultation will assist the juveniles and their parent(s) or guardian(s) in having a better understanding of the juvenile court process. It should also emphasize the possible consequences and potential future ramifications of an adjudication of delinquency.

Availability of Counsel on Appeal

Available data suggests that only a small number of juvenile cases are appealed.¹⁵³ This fact may result, in part, from the lack of effective assistance of counsel at the trial court level. Although both Minnesota statutes and the rules implicitly provide for the right of an appeal for juveniles, neither provides for the appointment of counsel to represent the juvenile on appeal.

It would be difficult for a juvenile without legal representation to assess whether or not the case should be appealed. For juveniles without a viable ability to appeal their cases, errors that occur at the trial court level, including the failure to appoint counsel or the acceptance of an inadequate waiver, cannot be redressed through the appellate courts.¹⁵⁴ Therefore, the Task Force recommends that the State Public Defender's Office be given the responsibility to handle the appeals of juvenile delinquency hearings.

¹⁵³Minnesota Supreme Court, Report of the Juvenile Representation Study Committee 13 (June 5, 1990).

¹⁵⁴Id.

Financial Implications

The Task Force is aware that the recommendations to increase the representation rates for juveniles have financial implications. The Task Force faced an extremely difficult task in attempting to identify the additional costs associated with this proposed increase the representation of juveniles charged with delinquency. The difficulty of this task was multiplied by the lack of statistics on the current costs associated with juvenile representation available from the judicial districts.

The cost of representation of juveniles in delinquency proceedings is handled several different ways in Minnesota. Five of the judicial districts are part of the state public defender system and defense services for juveniles are provided by part or full time public defenders.¹⁵⁵ The remaining five judicial districts contract with local private attorneys to provide the services of appointed counsel, and pay the attorneys directly with county funds.¹⁵⁶

Therefore, it was necessary to use a variety of information systems to attempt to gather information on the current cost of juvenile representation and estimate the financial implications of increasing that representation. Many judicial districts do not separate the costs of juvenile representation from the costs of adult criminal representation, and often the district's information systems utilized different years in their data bases. At times the information received from the various districts was not logically consistent. As a result, the financial impact of an increased representation system for juveniles is a general estimate based on the best efforts of the Task Force.

Two factors effect the cost of increasing the legal representation of juveniles. First, the information available on the rate of representation for each judicial district in 1991, indicated a statewide average representation rate of approximately 50 percent. Increasing the rate of representation will necessarily increase costs even if the adequacy of representation remains constant.

Second, the Task Force was also concerned that even in districts where juveniles are represented, the caseloads of most juvenile defenders are greatly in excess of the recommended standards. A 1991 study recommends that the annual caseload per full time attorney should not exceed 175 cases.¹⁵⁷

It has been estimated that many defense attorneys in the metropolitan area are handling more than 800 cases per year.¹⁵⁸ Therefore, it concerns the Task Force that even where defense attorneys are present and representing juveniles that additional attorneys will be necessary to provide truly effective assistance of counsel.

In 1991, 20,883 delinquency petitions were filed in the state. Of those, 6,334 involved felony allegations and 14,549 were non-felony allegations. The Task Force estimate of the cost of

¹⁵⁵Judicial districts that are part of the state public defender system are: Second, Third, Fourth, Sixth and Eighth.

¹⁵⁶Judicial districts that appoint local counsel on a contract basis are: First, Fifth, Seventh, Ninth and Tenth.

¹⁵⁷Spangenberg, Weighted Caseload Study for the State of Minnesota Board of Public Defense 5 (1991).

¹⁵⁸Id. at 29.

increased representation is based on a modest increase of three to four percent in the number of petitions filed statewide by 1995.¹⁵⁹ The Task Force estimated the cost of an increased representation system by two methods.

Method I

Assuming a modest increase of three to four percent per year in the number of petitions filed statewide, approximately 24,000 petitions will be filed in 1995. Estimating that each full time equivalent defense attorney would handle 300 petitions in a year, 80 full time equivalent attorneys would be needed statewide. This caseload estimate per attorney is based on the Spangenberg study which established maximum caseload standards for various types of cases.¹⁶⁰

The cost of one full time equivalent attorney providing services would need to include additional costs associated with representation. The Task Force estimated the cost per attorney as follows: one attorney salary at \$45,000 plus fringe benefits at 25 percent; the salary and benefits of a half time secretary at \$20,000; office and equipment expense at \$15,000. The expenses of investigators, expert witnesses, transcripts, etc. would bring the total cost to \$100,000.

Therefore, 80 full time equivalent attorneys providing representation services would cost approximately \$8,000,000. In addition, the Task Force recommends the creation of a juvenile appellate division within the State Public Defender's Office to handle juvenile appeals. It is estimated that the division would require approximately four full time entry-level defense attorneys. The division would also need \$25,000 per year for case transcripts for each attorney, one secretary for every two attorneys, and office overhead. Therefore, the overall cost associated with the creation of such a juvenile appellate division would be approximately \$400,000.¹⁶¹ Using this method the Task Force estimates the cost of an increased representation system to be approximately \$8,400,000.

Method II

The Task Force also estimated the total cost of an increased representation system by calculating the average cost per case.

The cost of representation for juveniles in the Fourth Judicial District was estimated to be approximately \$2,400,000 per year. However, this figure includes approximately 20 percent CHIPS petitions as well as delinquency petitions.¹⁶² If the CHIPS cases are removed, the

¹⁵⁹The average percentage of increase per year of juvenile dispositions with court activity or bench trial between 1988 and 1993 was 4.6%. The increase from 1991-1992 is 3.5% and for 1992-1993 was 4%.

¹⁶⁰The Spangenberg Group conducted a weighted caseload study of the public defender offices in the ten judicial districts. The study, completed in early 1991, set maximum caseload standards for various types of cases ranging from 80 cases per year for Juvenile Welfare (CHIPS) cases to 400 cases per year for misdemeanor cases.

¹⁶¹Letter from John Stuart, Minnesota Public Defender, to Barry Feld, p. 2 (Oct. 20, 1993)(on file with the Minnesota Supreme Court).

¹⁶²Letter from John H. Pederson, Administrator, Hennepin County, to Barry Feld, Professor of Law, University of Minnesota School of Law, p. 2-3 (Oct. 26, 1993)(on file with the Minnesota Supreme Court).

Task Force estimates Hennepin County is spending approximately \$1,750,000 per year on delinquency representation. Since Hennepin County processed 4,264 petitions in 1991, the cost per case in Hennepin County would be approximately \$410.

The Fourth and Second Judicial Districts are basically comprised of Hennepin and Ramsey Counties. These two districts both have a high representation rate and together they account for 7,332 or 35 percent of the delinquency petitions in the state. These two districts handle the bulk of the most serious felony cases and thus the most expensive cases.¹⁶³

The Task Force assumed that the Second Judicial District's cost per case is approximately the same as the Fourth Judicial District. Assuming a modest increase of three to four percent in the number of cases handled by these two districts, by 1995 these districts would handle approximately 8,000 cases at an average cost per case of \$410. The cost of an increased representation system in the two districts would be approximately \$3,280,000.

Through a new data collection effort by the State Public Defender's Office¹⁶⁴ initial information indicates that the average cost per case in the Third, Sixth, and Eighth districts, in greater Minnesota, for attorney time only, was \$130 and 3.3 hours per case.¹⁶⁵ These figures do not include office overhead, secretarial services, transcript costs, investigator fees, expert witness fees, mileage, or other costs associated with the representation of a case.

Since the current cost of representation is not available from the other greater Minnesota judicial districts, it was necessary to apply the average costs from the Third, Sixth, and Eighth Districts to the remaining greater Minnesota districts. In addition, it is assumed that the actual cost of representation including the office overhead, secretarial services, transcript costs, investigator fees, expert witness fees, mileage, and other costs associated with the representation of a case would increase the cost to approximately \$260 per case.¹⁶⁶

The greater Minnesota judicial districts handled 13,551 juvenile delinquency petitions in 1991. Assuming a modest increase of three to four percent in the number of cases filed, there would be approximately 16,000 petitions filed in 1995. The cost of an increased representation system in these eight districts would be approximately \$4,160,000.

Adding the cost of the Second and Fourth Judicial Districts to the estimate for greater Minnesota and adding the cost of the appellate division as outlined in Method I would bring the total cost of a full representation system to \$7,840,000.

The two methods of calculation indicate an increased representation system would cost between \$7,840,000 to \$8,400,000. The Task Force encountered extreme difficulty in estimating the current expenditures by the districts on juvenile cases. As a result, the Task

¹⁶³Memo from Barry Feld, Professor of Law, University of Minnesota Law School, to the Juvenile Justice Task Force, p. 2 (Dec. 20, 1993)(on file with the Minnesota Supreme Court).

¹⁶⁴The Board of Public Defense, State of Minnesota, has recently initiated a new Management Information System. This system will have the capacity to track data regarding the provision of juvenile representation in the five districts associated with the State Public Defender's Office.

¹⁶⁵Memo from Barry Feld, Professor of Law, University of Minnesota Law School, to the Juvenile Justice Task Force, p. 3 (Dec. 20, 1993)(on file with the Minnesota Supreme Court).

¹⁶⁶Id.

Force's best estimate of what is being spent on juvenile representation is \$3,000,000 statewide.¹⁶⁷ Therefore, the additional costs of increasing the representation system for juveniles would be between \$4,849,000 and \$5,400,000.

Recommendations

1. The Legislature and the Supreme Court Advisory Committee on Rules of Juvenile Procedure should provide that in person consultation with a defense attorney be mandatory prior to the waiver of counsel or the entry of a plea by juveniles charged with misdemeanors, and provide adequate funding for such representation.
2. The Legislature and the Supreme Court Advisory Committee on the Rules of Juvenile Procedure should provide that appointment of counsel or stand-by counsel be mandatory for juveniles charged with felonies or gross misdemeanors, and provide adequate funding for such representation.
3. The Legislature and the Supreme Court Advisory Committee on the Rules of Juvenile Procedure should provide that appointment of counsel or stand-by counsel be mandatory at disposition hearings when out-of-home placement is proposed for juveniles, and provide adequate funding for such representation.
4. The Legislature should provide that the State Public Defender's Office have the responsibility to handle the appeals of juvenile delinquency proceedings, based on accepted standards of indigence, and should provide adequate funding for this purpose.
5. The Supreme Court Advisory Committee on the Rules of Juvenile Procedure should establish procedures for the consultation with counsel for juveniles and the involvement of the juvenile's parent(s) or guardian(s) in the decision to waive counsel or to admit to the petition.
6. The Supreme Court Advisory Committee on the Rules of Juvenile Procedure should promulgate a uniform advisory waiver form designed to ensure that juveniles and their parent(s) or guardian(s) are informed of their respective rights and the potential ramifications of an adjudication of delinquency.

¹⁶⁷Id. at 4.

VI. Secure Facilities and Programming

An effective juvenile justice system program is one that combines accountability and sanctions with increasingly intensive programming and services.¹⁶⁸ A wide-range of sanctions should be available to fit the severity of the offense committed by the juvenile, and a graduated continuum of programming and services should be available that ranges from minimal intervention strategies to physically secure correctional settings.

Physical Security

The issue of whether or not physically secure correctional settings are needed in Minnesota stems from the concern that there are some juveniles committing serious offenses who must be confined to a physically secure setting in order to achieve public safety. It appears that there is a relatively small, but slowly growing, number of serious and repeat juvenile offenders whose criminal behavior requires placement in a physically secure correctional setting to hold them accountable for their delinquent acts, protect the public safety and to provide a structured environment with appropriate programming.¹⁶⁹

The Task Force strongly believes that juveniles placed in physically secure settings must also receive appropriate programming and services. As the severity of the sanction increases so must the intensity of the treatment and programming available to assist the juvenile in making positive changes in his or her life so as to reduce the chances of reoffending.

In order to achieve a full range of dispositional options in Minnesota, the Task Force recommends that placement in a physically secure setting be available for serious and repeat juvenile offenders within Minnesota who may pose a risk to public safety.¹⁷⁰ A physically secure setting is one in which the living environment is physically secure and movement between areas of the facility is restricted.

The Task Force intends that placement in a physically secure setting would be part of a comprehensive program that would subsequently move the juvenile into a non-physically secure setting, and then reintegrate the juvenile back into his or her community. In the opinion of the Task Force, juvenile offenders who are in need of a longer term of secure confinement to protect the public safety should continue to be certified to adult court.

The Need for Physically Secure Settings in Minnesota

The need for a physically secure capacity in Minnesota for juveniles appears to vary based on geographic location and philosophical approach. Although many of the areas of the state did not report a need for physical security, there appears to be some recognition that there may be a relatively small, but slowly growing, population of serious juvenile offenders that will need

¹⁶⁸Comprehensive Strategy for Serious Offenders, *supra* note 9, at 12.

¹⁶⁹*Id.* at 14.

¹⁷⁰The Task Force concentrated its efforts on the need for post-adjudication secure capacity as opposed to the need for physically secure detention options.

placement in some type of physically secure setting.

In the late 1970's, a national movement to deinstitutionalize juveniles was initiated. As a result, many states closed their large congregate care facilities in favor of smaller community based secure and non-secure programs. In Minnesota, the deinstitutionalization movement decreased the number of juveniles confined in state juvenile correctional institutions from approximately 600 juveniles, to approximately 180 juveniles placed in state operated facilities today. Currently, the state operate facilities are classified as staff secure settings, although there are physically secure units at both institutions.

The 1992 Legislature required the county correctional administrators of each judicial district to report their needs relative to physically secure juvenile facilities, including the need for post-adjudication facilities.¹⁷¹ These reports were based on the 1991 reporting year. The results of those reports indicate the Fourth Judicial District, Hennepin County, expressed the greatest need for a physically secure setting in which to place adjudicated juvenile offenders.¹⁷²

In contrast, the Second Judicial District, Ramsey County, stated clearly that it had no need for physically secure settings in Minnesota. The Second Judicial District stated that current programs were adequate to address their needs for both public safety and the offender's treatment.

Five of the remaining judicial districts indicated that the current resources were usually adequate and generally available to address their needs. Three of the judicial districts did not mention the need for physically secure settings in their reports nor did they indicate whether there was a need for physically secure settings.

In order to gather additional testimony, the Task Force sent a letter to the chief judges of the ten judicial districts in Minnesota, and other organizational representatives, requesting input on the issue of the state's need for secure post-adjudication juvenile correctional facilities. Thirteen responses were received.¹⁷³ Of the responses received, the Board of Hennepin County Commissioners and the Minnesota Police and Peace Officers Association, strongly advocated the need for a physically secure juvenile correctional facility. The Hennepin County Commissioners indicated that they felt there exists a small number of juveniles in Hennepin County that present significant risks to public safety and should be placed in a secure setting.

Two organizations were opposed to creating a physically secure facility for juveniles.¹⁷⁴ Six respondents were either unsure if there was a need in the state or felt the need was probably greatest in the metropolitan area. Two respondents felt if physically secure settings were deemed to be necessary, that they should be small and regionally based. In general, the strongest support for physically secure capacity, appeared to be in the metropolitan area with

¹⁷¹Minn. Laws 1992, Chap. 571, Art. 11, Sec. 16.

¹⁷²All ten judicial district reports are on file with the Minnesota Supreme Court.

¹⁷³Responses were received from the following: Ninth Judicial District; State Board of Public Defense; Minnesota Corrections Association; Minnesota Police and Peace Officers Association; Minnesota Association of Community Corrections Act Counties; Minnesota Association of County Probation Officers; Minnesota State Sheriff's Association; Board of Hennepin County Commissioners; Tenth Judicial District; The Minnesota County Attorneys Association; Fifth Judicial District; Eighth Judicial District; and First Judicial District. All responses are on file with the Minnesota Supreme Court.

¹⁷⁴The State Board of Public Defense and the Minnesota Association of County Probation Officers.

Hennepin County expressing the greatest need.

Advocacy for physically secure capacity in Hennepin County is based on a 1992 risk classification assessment conducted by the Hennepin County Bureau of Community Corrections, which determined that an upper limit of approximately 65 juveniles out of 279 fell into the category of needing a physically secure placement. As a result, Hennepin County recommended that post-adjudication physically secure capacity of approximately 30 beds be available.

The regional need for physically secure capacity varies greatly, with some regions reporting no need. The Task Force is recommending that the Department of Corrections extend the continuum of available sanctions and services for juveniles to include the option of having some physically secure capacity available within Minnesota.

Current Out-of-Home Programming in Minnesota

All out-of-home placements of delinquent juveniles must be in facilities licensed by the state. The Department of Corrections and the Department of Human Services license facilities that serve delinquent youth. Facilities are not licensed by both agencies.

The Department of Corrections (DOC) licenses facilities that are basically correctional in nature. The Department of Human Services (DHS) licenses residential treatment and mental health facilities for juveniles.

The facilities licensed by DHS are staffed by a combination of mental health professionals and social services staff. These facilities have a combined capacity of 1,191 juveniles. The residential treatment facilities provide treatment for emotionally disturbed juveniles. The group foster homes provide a lower level of treatment. Facilities licensed by DHS may serve both delinquent and CHIPS juveniles in the same facility.

Many of the DHS licensed facilities are members of the Minnesota Council of Child Caring Agencies (MCCCA). The Council is a coalition of 23 private child caring agencies throughout Minnesota providing an array of out-of-home care settings for children. In 1992, the Council's member agencies provided shelter care to 1,648 children.¹⁷⁵

Although most of the children are referred to MCCA programs through county social services, two-thirds of the placements were for court ordered treatment.¹⁷⁶ Forty-six percent of MCCA clients had committed a status offense, 21 percent had committed a crime against persons, and approximately 40 percent had committed a property crime.¹⁷⁷ These statistics indicate that there is a clear cross-over of the placement of delinquent juveniles between the DHS and DOC licensed facilities.

Post-adjudication or dispositional correctional programming is provided by a combination of residential treatment facilities and group foster homes licensed by DOC. There are fifty-five

¹⁷⁵Minnesota Council of Child Caring Agencies, Student Data Reporting System 1993 Annual Report at ii (1993).

¹⁷⁶*Id.* at 7.

¹⁷⁷*Id.* at 8.

group foster homes licensed by DOC, with a capacity of 331 juveniles. These foster homes provide a variety of dispositional placement options. Group foster homes are either operated privately or by various organizations.

There are eleven residential treatment facilities licensed by DOC, including Red Wing, Sauk Centre, and Thistledeew which are operated by DOC. These facilities have a combined capacity of 707 juveniles.

The state operated juvenile facilities of Red Wing, Sauk Centre, and Thistledeew are not considered physically secure facilities. Although some of the cottages may be locked at night, and there is some controlled movement between buildings, these facilities are considered staff secure. These facilities have a combined total of approximately 30 to 35 physically secure beds which are utilized for disciplinary needs within the facility, intake, and programming for new commitments.

Some physically secure post-adjudication placement capacity already exists in Minnesota. There appears to be approximately 30 to 35 secure treatment beds in private facilities licensed by the Department of Corrections, about 90 secure treatment beds in facilities licensed by the Department of Human Services, 29 secure treatment beds for adolescent chemical dependency treatment and about 230 secure beds in inpatient, locked adolescent psychiatric facilities.¹⁷⁸

At present, the serious juvenile offenders are being handled in a number of different ways. Serious offenders are generally placed in various private residential facilities around the state, or committed to the Commissioner of Corrections and placed in Red Wing or Sauk Center. Some serious offenders are placed in secure or non-secure facilities outside of Minnesota. Serious offenders are also certified to adult court and subsequently placed in adult facilities. Approximately 100 juveniles are certified to adult court each year.¹⁷⁹

Juveniles are placed out-of-state for a variety of reasons. For example, juveniles may be placed out-of-state because the geographic distance provides the necessary security, the program offers physical security, or the out-of-state program is most appropriate for their needs.

The Department of Human Services is in the process of completing a report on its study on the out-of-state placement of children. The study's target group was children with mental health problems and violent behavior who have been placed out-of-state. The study included a survey conducted on all children placed out-of-state between January 1, 1992 and October 1, 1993.¹⁸⁰

The results of the survey indicated that there were 179 cases of children placed out-of-state during that time frame. Of the 179 cases, 125 were through court services with a court order for delinquency.¹⁸¹ The metro area accounts for approximately 90 percent of the out-of-state placements, with Ramsey county most frequently utilizing out-of-state placements. The results

¹⁷⁸Report from David Johnson, Director Juvenile Detention Services Unit, Department of Corrections, to the Juvenile Justice Task Force (Sept. 10, 1993)(on file with the Minnesota Supreme Court).

¹⁷⁹Graphic Summary of Reference Hearings, supra note 59.

¹⁸⁰Children's Mental Health Unit, Mental Health Division, Minnesota Department of Human Services, Draft of Report on Out-of-State Placements 5 (Jan. 1994).

¹⁸¹Id. at 11.

of the Report do not indicate clearly whether or not juveniles are being placed out-of-state due to a lack of physically secure capacity available in Minnesota.

Expanding the Continuum of Programming

The availability of a full continuum of placement options is important when addressing the diverse programming needs of juveniles. The current out-of-home placement options available in Minnesota offer a wide variety of programming. A wide range of placement options and multiple service providers help ensure that quality programs are being delivered.

Since the movement to deinstitutionalize juveniles, Minnesota has not had the option of placing a juvenile in a physically secure correctional setting within Minnesota. However, the Task Force recognizes that juveniles whose presenting offense is sufficiently serious or who have failed to respond to lesser sanctions as evidenced by continued reoffending may be appropriate for placement in a secure setting. These serious and repeat juvenile offenders may constitute a ongoing threat to community safety. Therefore, the Task Force recommends that the option of a physically secure placement be added to Minnesota's current continuum of services.

A review of program evaluation literature conducted by the federal Office of Juvenile Justice and Delinquency Prevention indicated that providing physically security through large congregate-care correctional facilities has not proven to be effective.¹⁸² Examination of program evaluation literature by the Office indicates that small secure confinement options are the most promising alternatives to large physically secure facilities.¹⁸³

In 1971, Massachusetts closed its large training schools and replaced them with a network of decentralized community-based services and a few, small secure-care units for violent juvenile offenders.¹⁸⁴ In 1985, The National Council on Crime and Delinquency conducted a ten year study that examined the effectiveness of the Massachusetts program with those programs in California that still utilized the large correctional facility model. The study revealed that youth who spent five months in a Massachusetts program had a rearrest rate of 51 percent, while youth who spent 14 months in a California institution had a rearrest rate of 71 percent. Of those released from Massachusetts correctional programs, only 23 percent were reincarcerated while 62 percent of were reincarcerated after release from California institutions.¹⁸⁵

In the 1980's, Utah also closed its single large juvenile institution. Small secure units were built for chronic and violent juvenile offenders who averaged 30 prior convictions.¹⁸⁶ These small maximum security facilities house 30 to 40 youth per facility arranged in small living units of ten to twelve youth. Three evaluations have found the small secure facilities to be

¹⁸²Comprehensive Strategy for Serious Offenders, supra note 9, at 26-27.

¹⁸³Id. at 27.

¹⁸⁴Id. at 25.

¹⁸⁵Id.

¹⁸⁶Id.

effective.¹⁸⁷ One of these studies found that only 6 percent of released offenders were charged with violent crimes during a 12 month follow-up period. Most of the felony crime committed within one year after release was property not person oriented.¹⁸⁸

The Task Force recommends that the physically secure capacity to be added to the programming in Minnesota be small and regionally based. The intent of the Task Force is that programming would normally be developed within the eight to twelve bed range. If it is necessary to have a larger number of beds, then there should be small living units of eight to twelve beds created. Juveniles placed in a secure setting should subsequently make the transition to an open setting and eventually be reintegrated back into the community. The secure capacity is intended to be used for serious or repeat juvenile offenders who pose a threat to public safety.

A major concern of the Task Force is how to assess the level of dangerousness of a juvenile to the community and thereby target his or her placement in a physically secure setting. The Task Force was particularly concerned that confinement in a secure setting may be used inappropriately. The Task Force anticipates that commitment to the Commissioner of Corrections would not be necessary prior to placement in a physically secure setting.

Since placement in a physically secure setting is intended for those juveniles who have demonstrated that they pose a threat to public safety, it would include more juveniles than those designated as Serious Youthful Offenders. In addition, the Task Force does not intend that all Serious Youthful Offenders would automatically be placed in a physically secure setting.

The Task Force recommends that programs develop and use Risk and Needs Assessments to determine the appropriate placement for the juvenile offender. Risk assessments should be based on clearly defined objective criteria that focus on (1) the seriousness of the delinquent act; (2) the potential risk for reoffending, based on the presence of risk factors; and (3) the risk to public safety.¹⁸⁹

Physically secure sanctions have been found to be most effective in changing future conduct when they are coupled with comprehensive treatment and rehabilitation services.¹⁹⁰ The federal Office of Juvenile Justice and Delinquency Prevention's Violent Offender Program demonstrated that most violent juvenile offenders could be successfully rehabilitated through intensive treatment in small secure facilities.¹⁹¹

The establishment of small programs to provide intensive services in a physically secure environment offers the best hope for successful treatment of those juveniles who require a secure care setting.¹⁹² The Task Force recommends that programming for juvenile offenders

¹⁸⁷Id.

¹⁸⁸Id.

¹⁸⁹Id. at 12.

¹⁹⁰Id. at 14.

¹⁹¹Id. at 5.

¹⁹²Id. at 14.

in a secure setting be intensive with emphasis on competency, chemical dependency issues, sexuality issues, anger management, and mental health issues. Programming for competency would include but not be limited to literacy training, high school diploma or GED studies, life and employment skills.

The programming should be specifically structured to be part of the larger continuum of services provided for juvenile offenders. It is anticipated that juveniles placed in a physically secure setting, will make a transition to a non-secure setting, and eventually be reintegrated in the community.

Additional Programming Concerns

Appropriate programming will need to be developed for Serious Youthful Offenders, who could range from 14 to 23 years of age. The creation of the Serious Youthful Offender category places an emphasis on juvenile programming alternatives as the first response in a Serious Youthful Offender's disposition. This is expected to increase demand for program beds.

There will also be the need for specialized programming for the serious and repeat offender irrespective of whether that juvenile is placed in a physically secure setting. Currently, all post-adjudication residential facilities for juveniles in Minnesota have treatment programming. The Task Force recommends that the Department of Corrections ensure that specialized programming for serious and repeat juvenile offenders is provided within the continuum of juvenile services available in the state.

The Task Force recognizes that there may be innovative alternatives to existing programming that would be effective for some juveniles.¹⁹³ The development of less expensive alternatives to residential placement such as enhanced community based programming, or intensive supervision combined with day programming or reporting centers has not been fully explored in the context of dealing with serious and repeat offenders.

During the course of the Task Force's deliberations there were several programming issues that arose repeatedly. First, there was a clear need expressed for more culturally specific and sensitive programming. Of special concern was the lack of staff of color working in the juvenile justice system.

Second, the issue was raised regarding the lack of programming for female delinquents. It was noted that many areas of the state have very little or no access to programs for girls who have been adjudicated delinquent.

Third, concern was expressed regarding the special needs of the very young offender. Placements for very young and violent juveniles are difficult to find. The Task Force feels that special programming for all three of these groups would be worthy of further consideration.

¹⁹³Evaluations demonstrate that innovative programs, including secure and non-secure community-based programs, can be used effectively as alternatives to incarceration for many serious and violent juvenile offenders. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, *Id.* at 5.

Increased Responsibility of the State Department of Corrections

It is anticipated that a limited number of juveniles will need placement in a physically secure setting, and that security will need to be located statewide. Therefore, it is essential that the Legislature mandate increased fiscal and program responsibility by the State Department of Corrections for serious and repeat juvenile offenders.

The mandate should clarify the state versus local role in providing for the disposition of serious and repeat juvenile offenders. The mandate will be harmonious with the community corrections philosophy of handling the less serious offender locally, and will closely mirror the state versus local balance of responsibility that exists in the adult criminal system.

In order to complete the continuum of sanctions and services available, the Task Force recommends that the Department of Corrections fund and license, but not necessarily operate, additional physically secure capacity within Minnesota's juvenile justice system. This capacity is intended to be regionally based and developed for small numbers of juveniles.

In addition, the State Department of Corrections will also need to provide dispositional placement options, or work with local corrections to create regional placement options, for the new category of Serious Youthful Offenders. These placement options should consider the need for physical security for some of these offenders as well as the type of special programming appropriate for the Serious Youthful Offender, who could range from 14 to 23 years of age.

Recommendations

1. The Department of Corrections should fund and license, but not necessarily operate, small, regionally based secure capacity for juvenile offenders. Programming should be intensive with emphasis on competency, chemical dependency issues, sexuality issues, anger management, etc., but would be specifically structured as part of a larger continuum of services offered to juvenile offenders. The secure capacity is intended to be used for serious or repeat juvenile offenders who may pose a threat to public safety.
2. The State Department of Corrections should ensure that programming for serious and repeat offenders, who could range in age up to 23 years of age, is provided within the continuum of juvenile services available in the state. The Legislature should provide adequate funding for the development and implementation of such programming.
3. In order to assess the effectiveness of programming or treatment for juveniles, the Department of Corrections should provide for independent evaluations to be conducted on several residential treatment facilities or programs, and the Legislature should commit adequate resources to such evaluation.

VII. Juvenile Sentencing Guidelines and Juvenile Dispositions

The Current Law

The hallmark of the juvenile justice system is the ability to individualize the response of the system to each offender. After a juvenile is determined to be delinquent through an adjudication hearing, Minnesota law provides a wide array of potential dispositions that can be ordered by the judge through a disposition hearing. The court is charged with determining the dispositions that are necessary for rehabilitation of the juvenile. Final decisions on disposition ultimately rest with the court, however the decision usually includes input from the probation department, the offender, parents, defense counsel, prosecutor, and others.

The statute which governs the disposition of juveniles adjudicated delinquent states that, "[i]f the court finds that the child is delinquent, it shall enter an order making any of the following dispositions of the case which are deemed necessary to the rehabilitation of the child" ¹⁹⁴ The statute enumerates a variety of dispositions which can be used alone or in combination. The court may choose to:

- 1) counsel the child or the parents, guardian or custodian;
- 2) place the child under the supervision of a probation officer;
- 3) transfer legal custody of the child to one of the following: a child placing agency, a county welfare board, a reputable individual, a county home school, or a probation officer for placement in a group foster home;
- 4) transfer legal custody of the child to the commissioner of corrections;
- 5) order the child to make reasonable restitution;
- 6) require the child to pay a fine of up to \$700;
- 7) order the provision of special treatment or care for the child; and/or
- 8) cancel the driver's license of the child. ¹⁹⁵

The disposition order must contain findings of fact to support the disposition ordered, and must set forth in writing the following, "(a) why the best interests of the child are served by the disposition ordered; and (b) what alternative dispositions were considered by the court and why such dispositions were not appropriate in the instant case." ¹⁹⁶

The court may dismiss a petition for delinquency or otherwise terminate its jurisdiction on its own motion, or on the motion or petition of any interested party at any time. ¹⁹⁷ In general, the jurisdiction of the court after a juvenile is adjudicated delinquent can continue until the individual becomes 19 years of age. ¹⁹⁸

¹⁹⁴Minn. Stat. § 260.185, subd. 1 (Supp. 1993).

¹⁹⁵Minn. Stat. § 260.185, subd. 1, (a),(b),(c),(d),(e),(f),(g),(h) (Supp. 1993).

¹⁹⁶Minn. Stat. § 260.185, subd. 1 (Supp. 1993).

¹⁹⁷Minn. Stat. § 260.185, subd. 4 (Supp. 1993).

¹⁹⁸Id.

Dispositional Statistics

The Task Force considered the types of dispositions received by juveniles, and the factors influencing the dispositional outcomes. It appeared that the dispositions ordered most often are probation supervision, restitution, or fines.¹⁹⁹ The second most common dispositions are placement at a local facility, or placement at a local residential treatment program.²⁰⁰

A study conducted by the Supreme Court found that in only 17 percent of the 15,500 studied cases was the juvenile removed from the home as a result of the disposition.²⁰¹ Approximately 60 percent of the juveniles had no prior offense history with the court, and the largest percentage of cases handled were minor property offenses.²⁰²

The general results of the analysis concluded that the variance in the dispositional outcomes for juveniles could not be explained by the dispositional factors identified.²⁰³ The factors included items such as age, gender, offense, prior history, presence of attorney, etc. It appears that the design of a dispositional order remains individualized to the specific offender.

Some factors were identified by the study as exerting a strong influence on the likelihood of removal from home for the juvenile. Those with the strongest influence in the removal decision appear to be pre-trial detention, prior history, and offense severity.²⁰⁴

The Task Force also surveyed probation officers in order to determine what factors they considered most important in the decision to recommend out-of-home placement. The Task Force found that criminal history, including the severity of the current offense, was the most important factor considered by probation officers.²⁰⁵

The second most important factor considered by probation officers was the availability of appropriate services.²⁰⁶ The remaining factors in decreasing order of importance were the pre-placement screening team decision, local treatment options, placement history, funding available for appropriate service, social services involvement, and chemical dependency history.²⁰⁷

In addition to the statutory dispositional options, Minnesota has available a graduated system of juvenile justice based on a combination of age and seriousness of offense. This system

¹⁹⁹S. Krmpotich, Minnesota Supreme Court, Factors Influencing Dispositional Outcomes for Juvenile Delinquents (1987-1991) 2-3 (1993).

²⁰⁰Id.

²⁰¹Id. at 4.

²⁰²Id.

²⁰³Id.

²⁰⁴Id. at 5.

²⁰⁵Minnesota Supreme Court, Probation Officer Survey Responses (1993)(on file with the Minnesota Supreme Court).

²⁰⁶Id.

²⁰⁷Id.

including the changes recommended by the Task Force in this report is as follows:

<u>Age</u>	<u>Choice of Disposition</u>
less than age 10	CHIPS disposition only, regardless of offense
age 10-13	regular juvenile delinquency status only for all offenses
age 14-15	regular juvenile delinquency status if no motion for certification is filed; juvenile delinquency status, Serious Youthful Offender or certification if a felony and a motion is filed
age 16-17	<p>If it is not a presumptive commit to prison offense regular juvenile delinquency status if no motion for certification is filed; Serious Youthful Offender or certification if a felony and a motion is filed</p> <p>If a presumptive commit to prison offense regular delinquency status if no designation by prosecutor or motion for certification; Serious Youthful Offender or certification if a felony and a motion is filed. Designation as Serious Youthful offender can be either by prosecutor or as outcome of certification process.</p>

The Balance of Judicial Discretion and Regional Consistency

To add to the complexity of the task of determining an appropriate disposition, Minnesota's juvenile justice system is primarily county-based, giving us considerable variation that reflects local community standards, resources, and priorities. The Task Force found that regions or judicial districts did not support the development of statewide sentencing guidelines for juveniles similar to those in place in the adult criminal system.

Sentencing guidelines would require specific dispositional outcomes based on the offense history of the juvenile and the severity of the current offense. In reviewing the information from Washington state, the only state with true statewide sentencing guidelines, the Task Force found that even in Washington there were significant numbers of sentencing departures that rendered the system very similar to an individualized dispositional system. Testimony by Michael Curtis, Court Specialist, Washington, indicated that sentencing guidelines had not alleviated the problem of overrepresentation of children of color in the system, or made sentences truly consistent.

Therefore, the Task Force is not recommending that statewide sentencing guidelines, similar to the adult sentencing guidelines, be developed in Minnesota.

The Task Force is recommending that Minnesota's juvenile justice system retains the concept of individualized dispositions. However, there is a balancing need for consistency and significant support was expressed for a basic level of community standards relative to juvenile offenders.

The Task Force is recommending that the judges of each judicial district, in consultation with local professionals, clarify the criteria that the judges in the district will use in determining juvenile dispositions. Although a great many factors need to be considered when making

dispositions and all of the factors need to be weighed for each individual situation and offender, there also needs to be an appropriate level of accountability in the process.

The development and publication of the criteria to be used by the courts in a district, will allow all parties to be knowledgeable as to the factors being weighed by the court. It will also enable judges within districts to develop a regional consistency in their dispositions.

Expansion of Disposition Options

The Task Force supports the concept of offering a wide variety of services to meet the needs of the juvenile, and the dispositional needs of the court. Therefore, as discussed in the introductory section of this report, the Task Force is recommending that local corrections programs be encouraged to develop programs based on the principles of Restorative Justice that balance the needs of the offender, the victims and community.

Diversion programs have experienced widespread support and have been proven effective in providing services for juveniles.²⁰⁸ There are some counties that do not have diversion programs available. The Task Force is of the opinion that an effective juvenile justice system should have diversion programs available statewide, and is therefore recommending that all counties be required to have access to such a program.

The Task Force on Racial Bias in the Judicial System identified a clear overrepresentation of children of color detained by the police and courts. Therefore, in order to make decisions regarding detention reviewable for all children, the Task Force is recommending that objective detention criteria be developed and added to the Rules of Juvenile Procedure. These criteria will need to be consistent with existing laws.

The Task Force noted that there was significant testimony during the public hearings on the issue of family and parental involvement in the juvenile delinquency process. Parents testified that sometimes the only way to access assistance from the system was to have their child adjudicated delinquent. This initiated discussion among Task Force members regarding whether or not the juvenile court should have the ability to convert a petition for juvenile delinquency into a CHIPS petition.

The Task Force had insufficient time to fully consider this concept. However, the Task Force is of the opinion that the conversion of a delinquency petition to a CHIPS matter for disposition purposes, should the behavior be more appropriately dealt with by a CHIPS disposition, has merit. Therefore, the Task Force is recommending further study of this issue.

Recommendations

1. Statewide juvenile delinquency sentencing guidelines should not be established in the State of Minnesota.
2. The Legislature should require that the judges of each judicial district, in consultation

²⁰⁸Experience in Ramsey county over the past 18 years has been that approximately 90 percent of diverted youth are successful. Letter from James Hayes, Director, Juvenile Division, Ramsey County, to the Juvenile Justice Task Force (Dec. 14, 1993).

with county attorneys, public defenders, local corrections personnel, and the public, reduce to writing and publish, the criteria used by the judges in determining juvenile delinquency dispositions. This process should be monitored through the Supreme Court or the Conference of Chief Judges.

3. The Department of Corrections should fund grants that would help correctional delivery systems implement Restorative Justice principles. This effort would help develop programs that focus on balancing the needs of the victim and community. Juvenile offenders should leave the system more capable of living productively and responsibly in the community.
4. The Legislature should require diversion programs for juveniles, and provide appropriate funds to operate such juvenile diversion programs.
5. The Minnesota Supreme Court, through the Advisory Committee on the Rules of Juvenile Procedure, should develop rules on detention criteria for juveniles consistent with existing law, and modify The Rules of Juvenile Procedure to permit the challenge of juvenile detention decisions based on the statutory criteria and the Rules.
6. The Minnesota Supreme Court Advisory Committee on The Rules of Juvenile Procedure should consider whether district court judges should be able to convert a delinquency matter to a CHIPS matter for disposition purposes, in that the delinquent behavior may be more appropriately dealt with by a CHIPS disposition.

VIII. Other General Recommendations for Improvement

During the course of the Task Force's deliberations, there were several issues that arose repeatedly which were related to the effectiveness and quality of the juvenile justice system. While these issues were not directly related to the charge of the Task Force, they form the basis for significant improvements to the juvenile justice system.

Discussions by Juvenile Justice Task Force echoed the concerns expressed in the recently completed work of the Minnesota Supreme Court's Racial Bias Task Force. These concerns included, but were not limited to, the overrepresentation of children of color in the juvenile justice system; the lack of culturally specific programming; the lack of staff of color in the system; and the disparities in the detention and disposition of children of color. All of these concerns directly effect the quality of the juvenile justice system in Minnesota.

Recommendation on Racial Bias in the Courts

1. The Advisory Task Force on The Juvenile Justice System strongly endorses the recommendations put forth by The Task Force on Racial Bias and recommends that the Legislature ensure resources are available for the implementation of The Racial Bias Task Force recommendations.

The Task Force heard testimony and focus group discussions that raised the issue of data practices. The Task Force concluded that there is some information maintained by agencies dealing with juveniles that would assist other agencies in their work related to juveniles. This Task Force did not have the opportunity to fully explore the issue of removing specific barriers to the release of certain types of juvenile information, or when such release is necessary and appropriate. However, the issue was raised repeatedly, and merits further consideration by an appropriate group.

Recommendation on Data Practices

2. The Legislature should provide that specific data practices barriers to the sharing of certain kinds of necessary information between agencies dealing with delinquent juveniles be removed.

The provision of training would improve the quality of the services provided by the juvenile justice system. Interdisciplinary training would allow the valuable exchange of information and insight between the various agencies associated with the system. Training will improve the quality of the system; enhance preventative efforts; and improve the services to individuals. This Task Force could not address this issue fully within its limited time frame, but supports the continued education and training of the staff of the juvenile justice system.

Recommendation on Training

3. Interdisciplinary training for staff persons in the juvenile justice system such as judges, probation officers, foster home parents, and service providers, should be offered in areas

such as family and community violence; child development; roots of violence; and cultural diversity.

During the course of its work the Task Force identified two distinct data system needs. First, the juvenile justice system needs to be able track information by juvenile offender across counties for routine law enforcement and court purposes. Second, the juvenile justice system needs to have statewide statistical information that would allow analysis of the system and that could aggregate data on individual offenders. The Task Force is aware that The Criminal and Juvenile Justice Information Policy Group has accomplished significant work in both identifying the issues and the needs, and improving the adult criminal system. This Task Force supports the work of that group and its continuing effort to improve the data systems.

Recommendation on Statistics

4. The Legislature should appropriate funds to implement in the Department of Public Safety, Bureau of Criminal Apprehension, under the direction of the Criminal and Juvenile Justice Information Policy Group, a juvenile criminal history system for all offenses that would be considered a felony or gross misdemeanor if committed by an adult. The juvenile criminal history system should be similar to the current adult criminal history system.

The Juvenile Criminal History System should be designed to also support statistical analysis and evaluation of the juvenile justice system and aggregate profiles of juvenile offenders.

APPENDIX A

Information on the focus groups, public hearings, and site visits. Themes from the focus groups and public hearings are on file with the Minnesota Supreme Court.

Public Hearings

Public hearings were held in the following cities in Minnesota:

March 24	Hennepin County Government Center, Minneapolis
March 31	St. Paul Technical College, St. Paul
April 14	Lyon County Courthouse, Marshall
April 28	Olmsted County Courthouse, Rochester
May 12	Otter Tail County Courthouse, Fergus Falls
May 26	St. Louis County Courthouse, Duluth
June 8	Bemidji State University, Bemidji
October 20	Radisson Hotel, Bloomington

Focus Groups

Focus groups were held with the following:

February 2	Prosecutors
February 4	Corrections
February 9	Defense Attorneys
February 11	Racial Bias Task Force, Family & Juvenile Law
February 16	Law Enforcement
February 18	Treatment Providers, Health Care Workers
February 23	Education Leaders
February 25	Social Service Agencies, Guardian Ad Litem
March 2	Parents of Juvenile Offenders
March 4	Victims of Juvenile Crime

Program Site Visits

Program site visits were made to the following programs:

March 24	Hennepin County Juvenile Detention Center, Minneapolis
March 31	Boys Totem Town, St. Paul
April 28	MCF - Red Wing, Red Wing
May 12	Fergus Falls Intensive Treatment Program, Fergus Falls
May 26	Woodland Hills and Arrowhead Juvenile Center, Duluth
June 8	N.W. Minnesota Juvenile Training Center, Bemidji
August 19	MCF - St. Cloud, St. Cloud
August 25-26	Dane County Court, Madison, Wisconsin

APPENDIX B

Minority Report on The Right to Jury Trial

by Barry Feld²⁰⁹

Because young people brought to juvenile court are charged with crimes and face the prospect of coercive state intervention, they should receive the same criminal procedural safeguards as any other citizen, including the right to a jury trial. There is no principled justification for denying to young people the same procedural protections that other citizens receive as a matter of constitutional right. The justifications to deny juveniles this fundamental right are based on either an historical vision of an informal, rehabilitative juvenile court that is inconsistent with contemporary reality or political expediency that sacrifices the rights of young offenders.

More than 20 years ago, the U.S. Supreme Court in McKeiver v. Pennsylvania, 403 U.S. 528 (1971), denied to juveniles charged with crimes a constitutional right to jury trials in state delinquency proceedings. The Court ruled that "fundamental fairness" in juvenile proceedings required nothing more than accurate fact-finding, an objective as easily attained by a judge as a jury. The Court in McKeiver departed significantly from its prior analyses in In re Gault, 387 U.S. 1 (1967) that juvenile court procedures serve two functions: to assure accurate fact-finding and to protect against government oppression. Invoking the mythology of the sympathetic, paternalistic juvenile court judge, the McKeiver Court denied that protection against government oppression was required and rejected the argument that the inbred, closed nature of the juvenile court system could affect even the accuracy of fact-finding.

The McKeiver Court was concerned that requiring jury trials would disrupt the traditional juvenile court and its adjudicative practices. The Court noted the potential adverse impact of jury trials on the informality, flexibility, and confidentiality of juvenile court proceedings. Although the McKeiver Court found faults with the juvenile process, it asserted that jury trials would not correct those deficiencies but would instead make the juvenile process unduly formal and adversarial. Yet the Court did not consider: possible advantages due to increased formality in juvenile proceedings; whether its earlier decision in Gault had effectively foreclosed renewed concern with flexibility and informality; nor why formality at the adjudication stage was incompatible with therapeutic dispositions.

Most importantly, the McKeiver Court did not analyze the crucial distinctions between treatment in juvenile courts and punishment in criminal courts that justified different procedural safeguards for each forum. The Court simply noted that the ideal juvenile court system is "an intimate, informal protective proceeding," even while acknowledging that the "ideal" is seldom, if ever, realized. McKeiver v. Pennsylvania, 403 U.S. at 547-48, 550 (1971). By uncritically accepting the assertion that juvenile courts are "rehabilitative" rather than punitive, the Court did not examine either how juvenile court treatment differed from traditional criminal law punishment or whether there was any corresponding need for procedural protections against even benevolent governmental coercion. Thus, the Court never analyzed the fundamental basis for not affording juveniles all criminal procedural safeguards.

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The juvenile court today is little more than a scaled-down, second-class criminal court for young people. Since McKeiver, both nationally and in Minnesota, there has been a strong movement, both in theory and in practice, away from therapeutic individualized dispositions toward an emphasis on public safety, the seriousness of a youth's offense, and social control. This is evidenced in Minnesota by the legislative statement of purpose that the laws relating to delinquents are "to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior..." Minn. Stat. Ann. § 260.011(2)(supp. 1988). Minnesota's Courts recognize that the 1980 amendments to the purpose clause "reflect a shift in legislative attitude regarding punishment as a goal of juvenile courts...Prior to 1980, legislative concentration has been directed toward rehabilitating all errant youths not to punish them...Subsequent to the 1980 amendments...for youths charged with the commission of a crime, a more punitive approach has been emphasized..." In re D.F.B. 430 N.W.2d 275 at 478 (Minn. App. 1988).

A survey of Minnesota probation officers conducted by the Task Force found that public safety and a youth's offense and criminal history were the most important factors influencing dispositional recommendations. Empirical evaluations of juvenile court judges' sentencing practices corroborate the survey results. The Minnesota Task Force on Racial Bias in the Judicial System 103-5 (1993) and Barry C. Feld, "Justice by Geography: Urban, Suburban, and Rural Variations in Juvenile Justice Administration," 82 J. Crim.L. & Crim. 156 (1991) report that the seriousness of the present offense and the prior record are the most important factors influencing juvenile court judges' sentencing decisions. These are the same factors used in the adult sentencing guidelines. Minnesota's Department of Corrections administratively implemented a determinate sentencing plan for youths committed to the state's juvenile institutions that uses offense criteria similar to the sentencing guidelines. Thus, in practice, there is very little to distinguish sentencing policies for youths charged with crimes from those of adults. See generally, Barry C. Feld, "The Juvenile Court Meets the Principle of Offense: Punishment, Treatment, and the Difference it Makes," 68 B.U.L.Rev. 821 (1988). These changes in sentencing philosophy and practice call into question the underlying rationales of McKeiver that juvenile dispositions are benign and therapeutic, and that youths require fewer procedural safeguards than do adults charged with crimes.

Jury, Accurate Fact Finding, and Proof Beyond a Reasonable Doubt Although the McKeiver Court asserted that there was parity between the factual accuracy of juvenile and adult adjudications, judges and juries apply Winship's "proof beyond a reasonable doubt" standard differently.

Juries serve special protective functions in assuring the accuracy of factual determinations, and studies show that juries are more likely to acquit than are judges. Substantive criminal guilt is not just "factual guilt" but a complex assessment of moral culpability. The power of jury nullification provides a nexus between the legislature's original criminalization decision and the community's felt sense of justice in the application of laws to a particular case. These tendencies are attributable to various factors, including jury-judge evaluations of evidence, jury sentiments about the "law" (jury equity), and jury sympathy for the defendant [of which youthfulness garnered the greatest support]. Barry C. Feld, "Criminalizing Juvenile Justice," 69 Minn.L. Rev. at 244-46 (1984).

Given the same evidence, a judge in juvenile court is more likely to convict a youth than would a jury of detached citizens in a criminal proceeding. If you were charged with a crime, would you want the opportunity to have your case heard by a jury of your peers. Is it fair to

impose upon young people a justice process which would be impermissible for an adult?

Jury and Preventing Governmental Oppression Importantly, McKeiver simply ignored that procedural safeguards help to prevent governmental oppression. In Duncan v. Louisiana, 391 U.S. 145 (1968), the Court held that fundamental fairness in adult criminal proceedings requires both factual accuracy and protection against governmental oppression. The Duncan Court identified the manifold benefits of a jury trial: protections from a weak or biased judge; injection of the community's values into the decisionmaking process; and providing visibility and accountability for the workings of the process.

A right to jury trial is granted to criminal defendants in order to prevent oppression by the Government. Those who wrote our constitutions knew from history and experience that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge. If the defendant preferred the common-sense judgment of a jury to the more tutored but perhaps less sympathetic reaction of the single judge, he was to have it. Beyond this, the jury trial provisions ... reflect a fundamental decision about the exercise of official power—a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges. Fear of unchecked power ... found expression in the criminal law in this insistence upon community participation in the determination of guilt or innocence. Id. at 155-56.

All of these considerations are equally applicable in juvenile proceedings. They are especially pertinent in light of the changes in juvenile justice sentencing policy and the absence of evidence that juveniles derive any long term benefit from their sentences. Where is the evaluation research that demonstrates that Minnesota's juvenile courts consistently and systematically improve on recidivism rates by young offenders? In the absence of any valid or reliable evidence that youths sentenced for crimes are rehabilitated, don't juveniles deserve the same protection from coercive intervention that is available to adults?

Jury Impact on Juvenile Justice Administration For juvenile justice operatives, the jury trial has symbolic implications out of proportion to its practical impact. On the basis of the available evidence, the actual availability of juries appears to have a marginal and inconclusive practical impact on juvenile justice administration. While opponents of jury trials in juvenile court argue that the right would substantially disrupt juvenile proceedings, there is nothing but speculation to support such an objection, as evidenced both by the ten states that provide juries in juvenile courts and empirical evaluations of their use. Burch and Knaup, "The Impact of Jury Trials Upon the Administration of Juvenile Justice," 4 Clearing House Rev. 345, 358 (1970), found that the number of jury trials accounted for less than 2% of total volume of cases heard. Another study found that the rate of jury trials ranged between 0.5% and 3% of total petitions. Note, "The Right to a Jury Under the Juvenile Justice Act of 1977," 14 Gonzaga L. Rev. 401, 420-21 (1979).

A survey of states conducted by this Minnesota Juvenile Justice Task Force found that in those states which had information available, the right was seldom exercised. In Oklahoma, for example, about 1% of juveniles received a jury trial (51/4365), and in Texas, less than 1% (192/21,970) did. In all of Wisconsin, but Milwaukee, the rate was less than 3% (272/10,000). A delegation of the Task Force visited with Wisconsin juvenile court judges who indicated that they had very little philosophical or administrative difficulty accommodating juries in juvenile courts. In short, where available, juveniles use the jury even less frequently than do adult

defendants. But, the theoretical availability of a jury provides an important practical safeguard for the overall quality of justice.

Juries and Justice For those who are unwilling to provide juries to juveniles charged with crimes and who face the prospect of coercive state intervention (regardless of whether we label the coercion "treatment", "punishment", "sanctions", or "accountability"), is there a principled justification for denying a right we adults take for granted, or just the comforting security of the status quo? The basic philosophical and jurisprudential question whether juveniles should have a right to a jury on a par with adults is ultimately a value judgment and not an empirical question. Providing jury trials acknowledges the punitive reality of juvenile justice as well as the need to provide safeguards against even benevolently motivated governmental coercion. Young people are brought to juvenile court because they are charged with criminal misconduct, not because they require rehabilitation. If their criminal conduct warrants, they will receive coercive sanctions regardless of whether or not they will be "better off" as a result of their sentence.

Providing jury trials in juvenile court requires candor and honesty about what actually transpires in the name of rehabilitation. Benevolence, therapy, and rehabilitation are expansive concepts that may widen the net of social control.

It is important ... to recognize that when, in an authoritative setting, we attempt to do something for a child "because of what he is and needs," we are also doing something to him. The semantics of "socialized justice" are a trap for the unwary. Whatever one's motivations, however elevated one's objectives, if the measures taken result in the compulsory loss of the child's liberty, the involuntary separation of a child from his family, or even the supervision of a child's activities by a probation worker, the impact on the affected individuals is essentially a punitive one. Good intentions and a flexible vocabulary do not alter this reality. This is particularly so when, as is so often the case, the institution to which the child is committed is, in fact, a peno-custodial establishment. We shall escape much confusion here if we are willing to give candid recognition to the fact that the business of the juvenile courts inevitably consists, to a considerable degree, in dispensing punishment. If this is true, we can no more avoid the problem of unjust punishment in the juvenile court than in the criminal court. Francis Allen, Borderland of Criminal Law 18 (1964).

If one does not accept uncritically the juvenile court's claims of benevolence when sanctioning youths for committing crimes, is there anything about juveniles or justice that justifies denying jury trials in delinquency proceedings? Proponents of procedurally informal juvenile courts should demonstrate why juvenile justice procedures should not be structured like those of other institutions that administer punishment. What is there about a criminal justice system for youth that justifies or requires different procedures than for similarly situated adults?

The Right to a Jury and the Use of Juvenile Prior Convictions in an Offender's Criminal History Score In addition to assuring that juveniles receive the assistance of counsel, the use of juvenile records to enhance adult sentences arguably hinges on the availability of a right to a jury. See e.g. David Dormont, "For the Good of the Adult: An Examination of the Constitutionality of Using Prior Juvenile Adjudications to Enhance Adult Sentences," 75 Minn.L.Rev. 1769, 1793-94 (1991):

The Supreme Court approves of lower standards of incarceration procedures only in treatment-oriented proceedings where the government has disavowed any interest in criminal prosecution or punishment. Only when treatment is

the objective of the juvenile's sentence does McKeiver allow for different sentencing standards and a correspondingly lower level of due process in juvenile proceedings. Accordingly, courts should not interpret McKeiver to justify using juvenile convictions with reduced procedural protections for punitive purposes at the adult level. Interpreted in this manner, McKeiver would not allow courts to enhance an adult's sentence based on juvenile sentences obtained during proceedings governed by the lower "fundamental fairness" standard.

There is a fundamental inconsistency in using less stringent procedures to obtain criminal convictions in the name of rehabilitation and then using those convictions to enhance subsequent sentences.

Jury trial for 16 and 17 year old juveniles charged with a felony offense. Regardless of where we stand on the principle of juries as an abstract proposition, there are some important relationships between the jury issue and other Task Force recommendations. The decision whether to increase the sanctioning power of juvenile courts under the "Youthful Offender" provision is strongly tied to the availability of juries. The right to a jury trial is a constitutional prerequisite to a Youthful Offender provision. In order to preserve the possibility of adult confinement in the event that a YO fails on probation, youths 16 or 17 years old and charged with presumptive commit to prison offenses (Severity levels 7 - 10) must receive the right to a jury trial.

At the Task Force retreat on September 29-30, 1993, a majority of the Task Force members voted to recommend a more extensive right to a jury trial for all juveniles aged 16 and 17 who are charged with any felony offense. That position was based on simple justice. The rationale was that trials of juveniles 16 or older charged with felonies are already open to the public, so there are no confidentiality problems. In addition, older juveniles' felony proceedings typically may result in more serious consequences which require greater procedural protections. Finally, these are also the cases in which juvenile convictions can result in criminal history score points that later may be used to enhance adult sentences.

Even the tentative recommendation to provide a jury only to juveniles 16 or older and charged with felonies compromises the principle that people charged with crimes and facing coercive intervention require constitutional procedural safeguards. Two previous Minnesota Juvenile Justice Task Forces in 1981 and 1986 considered the right to a jury trial in juvenile court and concluded that there was no principled reason for differences in juvenile and adult procedures.

Unfortunately, at its meeting on October 15-16, 1993, a majority of the members of this Task Force retreated from the position they had earlier endorsed. The changes were motivated more by political calculations about the impact on the legislature of recommending a right to a jury trial than by a re-assessment of the principle that young people charged with crimes are entitled to the same procedural safeguards as any other criminal defendant. It is unfortunate that the "politics of crime" and a calculus of expediency prevented the Task Force from "doing the right thing." Hopefully, the legislature will prove their calculations wrong. Young people charged with crimes who face the prospect of coercive state intervention should receive the same criminal procedural safeguards as any other citizen including the right to a jury trial.