Report to the Minnesota Supreme Court

by the

Supreme Court Juvenile Justice Study Commission

November 1976

MINNESOTA SUPREME COURT

This project was supported by grant #1319015674 awarded to the Minnesota Supreme Court by the Governor's Commission on Crime Prevention and Control. Points of view and opinions stated in this report are those of the Supreme Court Juvenile Justice Study Commission and do not necessarily represent the official position or policies of the Crime Commission.

TABLE OF CONTENTS

LIST OF TABLES

Table

INTRODUCTION

In September, 1975, Chief Justice Robert J. Sheran of the Minnesota Supreme Court appointed a panel of seventeen persons to serve on a Commission to examine the role of the juvenile courts of Minnesota in the prevention and control of delinquency, to make recommendations toward increasing their effectiveness in this role, to state the reasons and findings which support each recommendation and to report back to the Supreme Court within a year. Persons appointed to the Commission were:

Terrance Hanold, Esq.
Chairperson, Study Commission
Chairman, Executive Committee,
Pillsbury Company[1]
Minneapolis

Professor Manuel P. Guerrero
Chairman, Chicano Studies
University of Minnesota
Minneapolis

Douglas Hall, Esq.
Director, Legal Rights Center
Minneapolis

Professor William Hoffman
Continuing Educ. in Social Work
University of Minnesota
Minneapolis

Robert W. Johnson, Esq.
County Attorney, Anoka County
Anoka

Mrs. Rhoda Lund
Minneapolis

Honorable John Milton
State Senator
White Bear Lake

Sergeant David Morris
Duluth Police Department

Honorable Ken Nelson
State Representative
Minneapolis

Professor Maynard E. Pirsig
Dean Emeritus, Law School
University of Minnesota
Minneapolis

Wayne Thompson
Senior Vice President
Dayton Hudson Corporation
Minneapolis

Honorable Elmer J. Tomfohr
Judge of County Court
Goodhue County
Red Wing

Officer Rodney Tschida[2]
Community Relations Division
Minneapolis Police Department

Honorable James Ulland
State Representative
Duluth

Martin Weinstein, Esq.
Mazlon, Kaplan, Edelman,
Borman, Brand & McNulty
Minneapolis

Dr. Ida-Lorraine Wilderson
Special Education Service Center
Minneapolis Public Schools

Professor Richard J. Clendenen
Law School, University of Minn.
Executive Director, Study
Commission

Associate Justice George Scott was designated to serve as the Supreme Court's liaison person for the Commission.

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[1] Retired January 1, 1976.
[2] Officer Tschida subsequently withdrew from the Commission.

In The State of the Judiciary - 1976 Chief Justice Robert Sheran, speaking for the Minnesota Supreme Court, outlined the background which led to its establishment of the Juvenile Justice Study Commission.

> Juvenile law is in a state of flux. In this area of law perhaps more than any other, recent developments suggest the need for re-examination of the theories upon which our juvenile law is premised. As the U. S. Supreme Court noted in Breed v. Jones, 421 U. S. 519 (1975):
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> > "Although the juvenile court system had its genesis in the desire to provide a distinctive procedure and setting to deal with the problems of youth, including those manifested by antisocial conduct, our decisions in recent years have recognized that there is a gap between the original benign conception of the system and its realities.
> >
> > "The court's response to that perception has been to make applicable in juvenile proceedings constitutional guaranties associated with traditional criminal prosecutions * * *. In so doing, the court has evidenced awareness of the threat which such a process represents to the juvenile court system, functioning in a unique manner, to ameliorate the harshness of criminal justice when applied to youthful offenders. That the system has fallen short of the expectations of its sponsors in no way detracts from the social benefits sought or from those benefits which can survive constitutional scrutiny."
>
> Minnesota decisions regarding juveniles handed down in the past year also demonstrate that our methods of dealing with juvenile delinquency need continuing, serious attention. Prior to Breed v. Jones, for example, this court held in the case of In re Welfare of A. L. J., 220 N. W. 2d 303 (1974), that orders of the juvenile court denying the state's motion to refer a juvenile for adult prosecution were nonappealable. In light of Breed, we have now held that either the state or the juvenile may appeal a referral decision by the juvenile judge. See In re Welfare of I.Q.S., an opinion filed June 4, 1976, which discusses nine consolidated juvenile matters.
>
> In re Welfare of J. E. C. 225 N. W. 2d 245 (1975), also caused some controversy. In that case, we remanded to the juvenile court for determinations concerning the existence or feasibility of creating treatment programs for certain dangerous yet treatable youths. After investigation and hearings, the juvenile court ultimately ordered

the youth referred for adult prosecution. That determination was appealed to our court by the juvenile, and in our recent Welfare of I. Q. S. opinion we upheld the juvenile court's reference order while calling the attention of the legislature to the problem involved. As we state in that case:

> "This court is deeply committed to the utilization of procedures which will both ensure and satisfy the ultimate in applicable constitutional safeguards. However, as the entire juvenile system is based upon and continually rejuvenated by legislative pronouncements directing its growth and delineating its scope, we are guided by those controlling legislative standards * * *."

In an effort to make a positive contribution to the discussion of juvenile problems beyond what can be accomplished within the confines of an opinion, the Minnesota Supreme Court has authorized an investigation of Minnesota's juvenile courts with a view toward securing recommendations for increasing their effectiveness. Under the chairmanship of Mr. Terrance Hanold and the directorship of Professor Richard Clendenen of the University of Minnesota Law School, the court's Juvenile Justice Study Commission is preparing for completion in late 1976 a report with recommendations on such thorny matters as:

(a) juvenile court intake procedures;
(b) juveniles' right to treatment;
(c) juvenile court decisional processes and criteria;
(d) referral for adult prosecution;
(e) final disposition.

We are confident that the study commission's report and recommendations will help focus discussion of juvenile matters in a positive fashion. We are likewise confident that it will spur helpful change.

Staff services for the Commission were provided by the Office of Delinquency Control, University of Minnesota under a grant made to the Supreme Court by the Governor's Commission on Crime Prevention and Control (Grant #1319015674).

Information for the Commission's study was secured primarily from three sources: (1) questionnaires and interviews and an examination of court records in ten sample counties, (2) a study of the characteristics of juveniles processed through selected Minnesota juvenile courts conducted by the Governor's Commission on Crime Prevention and Control,

and (3) questionnaires returned to the Commission from juvenile court judges, probation officers and law enforcement officials from throughout the state.

At its first meeting, September 18, 1975, the Commission decided to focus its study upon three aspects of the juvenile court function under the court's delinquency jurisdiction: (1) intake, detention and diversion, (2) transfer or certification, and (3) the right to treatment. In electing to focus upon three selected issues, the Commission was aware that other very important concerns would as a result receive little or no attention. This decision did not reflect any lack of concern for other functions or problems but rather a recognition that some narrowing of the scope of the Commission's inquiry was essential in order to maximize its productivity.

Given a broad mandate by the Supreme Court, the Commission also determined that the scope of its inquiry should not be restricted to matters which could be controlled and modified by court order or rule. Instead, it was decided that the final report, including any recommendations for change in the juvenile court system, should be addressed to the general public as well as to juvenile courts, the Supreme Court, the legislature, and organizations and agencies whose functions relate directly and closely to the operations of the juvenile courts.

Purpose and Rationale

The reasons why the Commission selected each of the areas listed above for special attention are important to a clear understanding of this report and its recommendations.

Intake, Detention and Diversion

Assuming that a great many young people violate the law at some point, how do some come into the court system while others avoid involvement? The intake process marks the boundary which separates the court from the rest of society. The intake process determines which youths will come under the jurisdiction of the juvenile court and will, if the petition is sustained, be subject to the dispositions available to it. Related decisions concern which juveniles will be detained and which youths will be diverted from formal court processing. Decisions

made at intake can profoundly affect a juvenile's life and have an impact on the ability of the juvenile court to achieve its objectives in society.

An examination of the basic issues surrounding intake requires at least two kinds of information. First, what are the personal characteristics, family backgrounds, and types of delinquent behavior of the young people coming into court? Second, how does the process of making intake decisions actually work and how can this process be improved to better fulfill the purposes of the court?

Certification

The issue of certification also marks a boundary, this one between the juvenile and the adult court systems. The transfer of a juvenile to adult court exposes him to a very different set of procedural rules and to very different forms of treatment and punishment. Often the juvenile is subject to harsher penalties if tried and sentenced as an adult. Certification is also one of the central issues in the controversy over whether "violent and hard core" juveniles should be retained in special juvenile programs or transferred to the jurisdiction of adult courts. Moreover, certification becomes a sensitive issue if one assumes that every juvenile has a right to be treated within the juvenile correctional system rather than the adult system. In light of these considerations, the Commission has examined the frequency and purposes for which certification is used and the process by which the decision to transfer is made. Its recommendations for change are based on a consideration of both who should be certified and how transfer should be effected.

Right to Treatment

The provision of effective treatment or "care and guidance" is a concern which grows out of the very heart of the purpose and philosophy of the juvenile court. Based on its reading of the Minnesota Juvenile Court Act and recent court decisions, the Commission agreed to proceed with its study under the assumption that juveniles possess a legal right to treatment. The ramifications of a strongly-held right to treatment touch on many areas of juvenile court operations, ranging from jurisdiction to procedures to the nature of services and programs used as dispositions. However, the considerable ambiguity of the right to treatment

concept has left it open to conflicting interpretations and has diluted its impact. The Commission first has attempted to clarify what is meant and subsumed by a right to treatment and then has explored problems relating to the achievement of that objective.

The Juvenile Court in Minnesota

Organization

In the 84 Minnesota Counties with a population of 200,000 or less and in St. Louis County, the county court is the juvenile court. The County Court Act of 1972 eliminated all municipal courts except those in Hennepin, Ramsey and St. Louis Counties. St. Louis County retained the municipal court system until January, 1974, but now is part of the county court system. There are presently 66 county court districts covering 85 counties, with each county court having a civil, family (juvenile), probate and criminal division. The county court judge, who is elected, is also the judge of the juvenile court. In districts where there is more than one judge, the usual practice is for one person to handle the majority of juvenile cases. In Hennepin and Ramsey Counties, which are not part of the county court system, the district courts have jurisdiction over juveniles. In Ramsey, the district court judges designate one of their number as judge of the juvenile court. In Hennepin, a district judge is elected to the office of "District Court Judge, Juvenile Court Division."

Procedural Rules

Proceedings of the county courts having juvenile jurisdiction are governed by the Rules of Procedure for Juvenile Court Proceedings in Minnesota prepared by the Rules Committee of the Minnesota Juvenile Judges Association and adopted by that Association in 1968. These rules do not cover proceedings in Hennepin and Ramsey Counties, where the juvenile court is a division of the district court. The district court judges in Hennepin and Ramsey would have to take independent action to adopt the Minnesota Juvenile Court Rules; at this time each of these two district courts has its own set of rules for juvenile proceedings.

Jurisdiction

Juvenile courts in Minnesota have original and exclusive jurisdiction in proceedings concerning any juvenile (person under the age of 18)

alleged to be delinquent, a traffic offender, neglected or dependent. They also have jurisdiction over termination of parental rights, appointment and removal of guardians, judicial consent for a child to marry and adoptions.

The focus of this study is on the delinquency jurisdiction of the juvenile court in Minnesota. As defined by law (Minn. Stat. Sec. 260.015, Subd. 5), a delinquent child is one who has: (a) violated a state or local law or ordinance (except traffic offenses); (b) violated a federal law or law of another state and been referred to juvenile court; (c) is habitually truant from school; or (d) who is "uncontrolled by his parent, guardian, or other custodian by reason of being wayward or habitually disobedient." With the exception of certain age-related drug and alcohol offenses, the behaviors included in the first two categories of the delinquency definition are those which would be crimes if committed by an adult. The last two categories include behaviors -- often referred to as "status offenses" -- which are legally prohibited only for juveniles.

Study Design

The material covered by this report goes beyond the subject matter embraced by the Commission's study. Commission members were selected for their varied and extensive backgrounds, knowledge and experience which could be drawn upon to carry out the work of the Commission. The purpose of the study and of the Commission's hearings was to collect additional information which would help guide its deliberations.

It should be specifically noted that the study was not designed to measure the effectiveness of juvenile courts as compared to possible alternative approaches to the problem such as the so-called justice model. Neither are the data presented a valid sampling of opinion or experience within the field. Instead the basic premise guiding the research reported in the following chapters was that several diverse kinds of information, each contributing another perspective on the juvenile court, would be valuable to the Commission in its deliberations. The sources of this information are described below.

Legal Analysis

The Minnesota Statutes, Rules of Procedure for Juvenile Court

Proceedings in Minnesota, Hennepin County Juvenile Court Bench Book, and relevant case law were examined to determine the legal context of the intake, certification, and right to treatment issues.

Questionnaires and Interviews

Questionnaires and interviews were used to collect information, including descriptions of criteria and procedures used in making decisions, assessments of current legal requirements and practices in the three issue areas, and opinions about potential changes in court operations, from key officials in ten sample counties. The interviews probed more deeply into matters raised by the questionnaires and provided an opportunity for further reactions and comments by the officials.

The ten sample counties were selected in order to include (a) counties from as many judicial districts as possible, and thus from all regions of the state, (b) counties with diverse population sizes, and (c) when possible, counties participating in the juvenile court study conducted by the Governor's Commission on Crime Prevention and Control. The ten finally selected were:

County	Judicial District	Population, 1970 Census	Inclusion in GCC Study
Dakota	1	139,608	no
Olmsted	3	84,104	yes
Hennepin	4	960,080	yes
Nobles	5	23,208	yes
St. Louis	6	220,693	yes
Otter Tail	7	46,097	yes
Pope	8	11,107	no
Beltrami	9	26,373	no
Pennington	9	13,266	yes
Sherburne	10	18,344	no

Both questionnaires and interviews were obtained from each county attorney's office in all ten counties and from one or more probation officers in all ten. Respondents were typically assistant county attorneys assigned to handle the bulk of the juvenile cases, and probation officers who worked exclusively or almost exclusively with juveniles. Questionnaire and interview data was obtained from eleven judges in the

ten-county sample, from sixteen municipal police officers in nine different counties and from seven sheriff's officers in seven counties.[3]

Eighty-seven juveniles also were interviewed during field trips to nine of the sample counties. An attempt was made to talk with equal numbers of juveniles from three categories:

1. those arrested but not adjudicated delinquent, primarily diversions and dismissals.
2. those adjudicated delinquent but not institutionalized, primarily probation.
3. those institutionalized for one month or longer.

The purpose of these interviews was to gather perceptions from another point of view about the fairness and effectiveness of police, detention, court, probation and institutions. Respondents were chosen by probation officers, and no claim is made that they are representative of all juveniles involved with the court. No attempt to analyze this information statistically was made and no separate section on juvenile perceptions was written; instead, the material is referred to in various places throughout the report.

Brief surveys comprised of from three to five questions were sent to officials in non-sample counties throughout the state in order to add their reactions on a few select matters to our study. Responses were received from twenty-seven juvenile court judges (representing thirty counties), thirty-five probation departments, and thirteen police departments in municipalities of greater than 10,000 people.

Court Records

A search of the court records in the ten sample counties was conducted to collect information on juvenile cases for which a motion for reference was made during the calendar years 1973 through 1975 in all

[3]Such a small number of questionnaire and interview responses from any given category of decision makers does not lend itself to quantitive analysis. The reader should bear in mind that the purpose of the information collected through questionnaires and interviews was to provide a variety of subjective perceptions of current practice, problem areas and possible changes within the juvenile court. A complete list of questionnaire and interview respondents is included in the Appendix as well as response rates for each questionnaire distributed.

counties but Hennepin and during the years 1974-75 in Hennepin County.[4] Each case was followed from the point of motion for reference to the final disposition in juvenile or adult court, and background information including demographic characteristics, prior record, and the alleged offense which led to the initiation of reference proceedings also was collected. In all, 134 cases were recorded and analyzed, and they provide the major data base for the discussion of certification in Chapter II.

During the same period that this research was conducted, the Governor's Commission on Crime Prevention and Control examined court records in ten counties to collect demographic, offense, and disposition data on juveniles brought into court during two months of 1975. One of the conditions of the grant supporting the Supreme Court Juvenile Justice Study Commission project was that the Commission review the findings of the Governor's Commission on Crime Prevention and Control study before formulating its final recommendations. Those findings which are most relevant to the deliberations of the Supreme Court Commission have been summarized in several places throughout this report, primarily in the sections on intake and certification. Copies of the preliminary report on the research conducted by the Governor's Commission on Crime Prevention and Control are available from that agency. A final report will be published about March, 1977.

It should be noted that portions of the following material are presented without reference to specific research findings. Such portions summarize testimony received as well as the knowledge and experience of Commission members.

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[4]The decision to include cases from only two years in Hennepin County was based on the unavailability of comparable information on motions made in the preceding year.

CHAPTER I

MAJOR FINDINGS AND RECOMMENDATIONS

Context

> "The purpose of the laws relating to juvenile courts is to secure for each minor under the jurisdiction of the court the care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interests of the state; to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety and protection of the public cannot be adequately safeguarded without removal; and, when the minor is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents. The laws relating to juvenile courts shall be liberally construed to carry out these purposes."[1]

The Commission affirms this statement as an appropriate declaration of the social purposes to be served by the juvenile justice system and of the objectives by which the performance of the juvenile courts is to be measured, and makes its recommendations within the framework of this general perspective. Although the quoted section addresses itself to all of the categories of children which concern the juvenile courts, it has particular pertinence to delinquent children, the class to which the Commission has limited its inquiry, and to the protection of their fundamental rights while subject to juvenile court jurisdiction.

Unfortunately, the category of delinquent youth is the only group which the public associates with the juvenile courts, thus ignoring their important and sensitive functions pertaining to neglected, dependent and adoptive children. Legislative direction in regard to delinquent children, those whose conduct is violative of law or is habitually disobedient to parental or school authority, reflects the overriding concern of society to amend their conduct through care and guidance and constructive influences. The statute makes it the duty of the juvenile courts to

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[1] 260.11 Subdivision 2, Minnesota Juvenile Court Act.

determine when its intervention is required to secure these remedial actions for the child's benefit, and the specific care, direction and corrective programs which are best suited to the child coming within its jurisdiction. The ultimate measure of the social utility of the juvenile justice system respecting delinquent children lies therefore in the degree of its success in changing conduct patterns to the advantage of the child and of society or, to use current terminology, in "rehabilitating" the child. On this issue two viewpoints tending to opposite extremes found occasional expression in the Commission's hearings, and it is convenient to dispose of both of them at the outset.

One position is that virtually every child is capable of rehabilitation--a position which would imply that any level of success short of perfection is evidence of a defective judicial performance. Whatever its merits philosophically, this proposition is impossible of either proof or disproof by evidential means. Certainly experience requires the caveat that the statement is untrue given the present state of knowledge and level of rehabilitative competence. Our statutes recognize these limitations by making provision for disposition outside the juvenile justice system of children who are not amenable to treatment by its processes.

The contrary position is that no judicially administered rehabilitation program works. This view is disputed by the experience of nearly all of those persons appearing before the Commission and by the experience of the members of the Commission as well. This is not to say that in the case of hard core delinquents the programs prescribed by the courts have enjoyed universal success. The Commission was given no evidence that any specific program researched to date has demonstrated outstanding capacity to insulate a broad spectrum of juvenile offenders against further delinquencies. Instead it must be concluded that a range of treatment strategies should be selectively employed if the maximum number of delinquent children are to be rehabilitated. Nevertheless, the record shows that the majority of delinquents refrain from further offenses, and even among those described as hard core there are a significant number who eventually respond favorably to a program appropriate to their special needs.

A test of effectiveness often applied by researchers to juvenile justice system programs is the rate of recidivism, that is, the frequency of reinvolvement of those treated in further delinquencies. Recidivism represents a very crude and sometimes enigmatical measure of the effectiveness of a delinquency treatment program. The life experience of a juvenile is the product of many diverse and subtly interweaving influences both before and after his participation in a "treatment" program. It is unreasonable to expect any such program to immunize every participating juvenile for all time against further delinquency-producing influences in his future experience. Although subject to discount for these reasons, recidivism is none the less a relevant and necessary measure to apply to the performance of the juvenile justice system and to the programs it uses.

Although the Commission was not directly concerned with the evaluation of treatment programs, testimony directed to the issues central to its inquiry necessarily touched on the utility in various circumstances of numerous such programs. Witnesses described many instances of the rehabilitation of juveniles who committed multiple offenses, but they also made it clear that a substantial percentage of hard core delinquents did not respond constructively to any program. While past results would justify a prediction of the proportion of hard core delinquents who will be unresponsive to treatment in the future, the data provides no basis for predetermining whether treatment will fail or succeed for a particular child in that class. Both the sanction of the law and the dictates of humanity require that the juvenile courts make every reasonable effort in behalf of each child, despite his past record, until the results demonstrate that the prospect of rehabilitation is altogether remote.

In assessing the performance of the juvenile courts it must be remembered that they are not charged with preventing delinquency. That burden is borne by the family, the school, the churches, the social agencies, the community, and the legislative and administrative branches of government. Responsibility for the occurrence and the rate of juvenile delinquency is theirs and theirs alone. The job of the juvenile court is to repair the faults which all of these institutions failed to prevent. These circumstances dictate moderation in passing judgment on

the juvenile justice system, which clearly is required to work in a difficult area where the risk of failure is substantial.

It also must be remembered that deterrence of potential delinquents is not a function of the juvenile courts. The essential element of deterrence is the publication at large of the identity of the alleged offense of and the penalties inflicted on a person who is before the court on a criminal charge. But the juvenile court is not a court of criminal jurisdiction, and both the punishment of those adjudicated delinquent and any publicity respecting their identity, the circumstances leading to their detention, and the proceedings thereafter are strictly forbidden by statute. The juvenile code expressly provides that a violation of law by a child is not a crime and that the child is not a criminal or subject to any of the penalties of the criminal code so long as he is within the jurisdiction of the juvenile court. Both press and general public are denied access to the proceedings and records in juvenile court.

While the Commission has not attempted an evaluation or rating of the performance of the juvenile courts or of the courses of treatment they administer, the Commission concluded from testimony received and from the data collected by its staff that the juvenile courts, within the resources at their disposal, generally attempt compliance with the statutory intent to protect the well-being and nurture of delinquent juveniles by means of the imposition of appropriate treatment and controls. The Commission also concluded that significant improvement in the performance of the juvenile justice system is reasonably feasible and both should be and is a continuing objective of the juvenile courts and of the Minnesota Supreme Court.

The basis for a consistent effort at improvement is the continuing enlargement of the body of pertinent information respecting the incidence and treatment of juvenile delinquency in this state. The Commission recommends that there be constant and careful monitoring of the results obtained from treatment programs in order to guide their modification and development. The Commission recommends that the data assembled by the Commission's staff and by the Governor's Commission on Crime Prevention and Control be expanded in scope and continued over time to assist

research into the incidence of delinquency and the causes of recidivism in juveniles. The Commission also recommends that when a more adequate body of data has been collected and put in an organized form permitting in-depth analysis and research, that a new study be undertaken to evaluate the performance and effectiveness of the system of juvenile justice in this state.

The grave danger growing out of claims that nothing works--that no one knows how to treat--is that the juvenile justice field may quit trying. As indicated above, the argument has been made that the rehabilitation ideal should be abandoned because it cannot be realized. Again, the Commission rejects such a conclusion because it believes there is not sufficient evidence to support it. Under present law the Commission finds such a position to violate the philosophy of the juvenile court act, legislative intent in its establishment, and the legal rights of juveniles found in need of the state's care and protection through juvenile court process.

Intake, Detention and Diversion

1.

Out of its survey of ten sample counties the Commission found four different arrangements for handling intake into the juvenile court. In six of the ten counties, intake decisions were made by the county attorneys without formalized participation by other agencies or individuals. In two counties intake was handled by court services without formalized participation by other agencies. In one county there was an agreed upon division of responsibility between the office of the county attorney and court services with more serious charges going directly to the county attorney for decision while lesser charges were screened through court services. In one of the ten counties intake decisions were made by a committee composed of representatives of the sheriff's office, a police department, county welfare and the probation office.

The Committee reviewed these varying arrangements in relation to the accepted purposes of the intake function. There are many juvenile offenders who can be provided with the appropriate "care and guidance" without requiring the formal intervention of the court. The intake

process should be able to identify and screen out these cases. Intake must be capable of assessing the treatment needs of juveniles, and must make appropriate decisions based upon treatment needs as well as upon the sufficiency of the evidence indicating the child has committed the alleged offense. The intake process then must bring into the decision-making process the following elements which are listed in the order of their priority: (1) sufficient understanding of youth to identify behavior patterns which reveal or indicate probable need for treatment, (2) knowledge of resources which are available to guide, assist or treat youth, and (3) technical knowledge of the law.

Accepting this order of priorities, the Commission finds that the handling of intake should not be assigned or surrendered to the office of the county attorney. In reaching this conclusion the Commission considered the possibility of placing the basic intake authority within the county attorney's office, while strengthening the knowledge of youth and community resources within that office. Under this arrangement ultimate intake authority would reside with those who specialize in decisions made on prosecutorial and legal sufficiency grounds. Almost inevitably treatment needs would become a secondary concern. Furthermore, even an increase in specially-trained staff is not likely to enable the county attorney's office to match court services or representatives of several community agencies in terms of sheer exposure to and experience with juveniles.

Reserving discussion of the intake committee structure for attention later in this summary, the Commission recommends that the process of intake be under the direction of the juvenile court, to be administered according to the following standards:

a. Intake should be concerned with questions of the amenability and need for treatment of the juveniles brought to its attention, as well as whether the facts indicate that a law has been violated or a status offense committed.

b. In addition to describing the circumstances surrounding the alleged offense, a delinquency petition brought under present provisions of the juvenile code should state the grounds to believe that the child is in need of treatment by the court.

c. Intake should receive complaints directly from police, schools, parents or other citizens and should regularly involve the advice of the county attorney regarding the sufficiency of the evidence and the legal advisability of presenting the case in court.

d. Intake should be authorized to dismiss the charge with no further action, place the child (with his consent) in a diversion program operated by the court, refer the child to another agency, or approve a petition into juvenile court.

e. To avoid the possibility of a conflict of interest, the juvenile court judge should remove himself personally from consideration of intake decisions. Although he should not participate in individual decisions to petition, he will retain his appointive power and may participate in drawing general guidelines for diversion decisions.

2.

The Commission was impressed with the need for and value of securing certain kinds of community input into intake process and policy. Not only may such input contribute to a fuller understanding of a problem or possible resource, but also may reveal attitudes from which a particular youth or group may need protection. The Commission believes that input from representatives of a community's minority groups is particularly important to avoid judgements which reflect lack of understanding or neglect of potential resources out of a lack of sensitivity to them. The Commission recommends that juvenile courts provide, through the appointment of an advisory committee representative of the community served or by other means, that intake determinations take into consideration the environmental and cultural situation of the juvenile, the prevailing standards of behavior in his community, and the full range of potential resources which might be utilized in his behalf.

The Commission also encourages the strengthening of juvenile delinquency prevention efforts at both the state level (the Governor's Commission on Crime Prevention and Control, the Department of Corrections and other state agencies) and in the local community. Juvenile court judges in particular should take an active role in stimulating prevention programs. Recognizing the close relationship between prevention and juvenile court intake, the Commission further suggests that there

should be effective ties between local prevention efforts and the intake committee or other structure recommended above.

3.

It should be recognized that intake decision-making in itself will have limited effect if the only options available are sending the child into court or doing nothing. The presence of diversion alternatives which can meet the needs of many juveniles without court intervention is essential if the treatment objectives of intake are to be taken seriously.

While the Commission strongly supports the concept of diversion, it questions some characteristics of diversion programs currently in operation. Staff research indicates that the juvenile often is required to admit informally the truth of the allegations and to recount the events and background of the charges before being diverted, even though he may be advised that whatever he says may be used against him later. Consequently, there is concern about the possible denial of due process rights at this point, particularly if the child is later petitioned into court for the original offense.

Therefore, the Commission recommends that juvenile courts be encouraged and authorized to establish and administer diversion programs in accordance with these standards:

a. That no admission be required before the child is allowed to participate in a diversion program.

b. That no admissions or statements made by the parent or child during a diversion conference or while participating in a diversion program be admissible in any subsequent adjudicatory hearing.

c. That a child's decision to participate in a diversion program should be a voluntary one, although intake may retain the authority to file a petition on the original offense if the child does not cooperate with diversion.

d. That the juvenile courts establish written guidelines and carefully monitor diversion programs operated or used by court services.

Diversion has become a regular feature of many proposals to revise the juvenile justice system. The model of "true diversion" as described in the main body of the Commission's report may offer unique benefits which for the most part remain untapped. There also appears to be

considerable interest around the state in establishing new programs that could serve as diversion alternatives or to expand existing ones. Yet, there is little in the way of rigorously-collected evidence by which to evaluate current programs. Therefore, the Commission recommends that the Governor's Commission on Crime Prevention and Control give high priority to research efforts which would evaluate the various types of diversion programs in an in-depth and systematic way. The Commission also encourages the Crime Commission and the Department of Corrections to assist in developing several working examples of the "true diversion" model for the purpose of more fully exploring the effectiveness of that approach.

4.

In the past year, the state legislature has revised the statutes governing detention.[2] In contrast to previous law, the new statute:

a. Defines more specifically the basic criteria under which secure detention is authorized and restricts further the circumstances under which detention is authorized for status offenses. Detention is now allowed only when there is reason to believe that the child would physically endanger himself or others, not voluntarily appear in court, not remain in the care and control of the person to whom he is released, or that the child's health and welfare would be immediately endangered. In addition, status offenders can no longer be placed in secure detention unless they have previously excaped from a shelter care facility.

b. Shortens to 36 hours (Sundays and holidays excluded) the period a child may be detained unless a petition is filed and a detention hearing is held.

c. Specifies visitation and telephone rights of the detained child.

d. Specifies 14 as the minimum age at which a child may be detained in a jail, lockup or other adult confinement facility.

Available data suggests that detention has been abused frequently in some areas of the state under the previous statute. The Commission recognizes the dangers of unnecessary or inappropriate detention and endorses the intent and thrust of the new legislation which seeks to

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[2] Minn. Stat. Sec. 260.171, .172, .173.

avoid these dangers. Detention should be employed only when essential and the time a juvenile spends in detention should be kept to an absolute minimum. If local facilities are not adequate for meeting the provisions of the new legislation, it is the responsibility of the community to provide them.

One of the difficulties hampering an effective examination of detention practices in the past has been the lack of accurate and complete information about the kinds of behavior for which juveniles were being detained. The Governor's Commission on Crime Prevention and Control is planning an extensive effort to determine the degree to which the secure detention of status offenders is reduced under the new statute during the next two years. It also will evaluate the use of shelter care facilities in lieu of secure detention facilities. At the same time, the Department of Corrections plans to revise substantially the way it collects information regarding detention, and hopes to have this new information system in operation by January 1, 1978. In endorsing the objectives of the new statute, our Commission emphasizes the need for careful monitoring of its implementation, for evaluation of its impact on detention practices and for consideration of its administrative practicalities. For this reason, the Commission urges that the monitoring efforts of the Governor's Commission on Crime Prevention and Control and the Department of Corrections receive high priority and support throughout the state.

Reference for Prosecution

1.

The Commission's study reveals that the reference or certification process is utilized to achieve three differing purposes or objectives within the juvenile court system in Minnesota. In Hennepin County certifications are requested for youth who, in the judgement of the office of the county attorney, represent substantial threats to the public safety or cannot be effectively handled with the resources currently available through the juvenile court process. This purpose or objective is consistent with legislative intent in enacting the enabling statute. A second purpose for which certification is utilized in a

number of courts is to attempt to insure that the offender will be subject to correctional or rehabilitative efforts beyond his 18th birthday. Thus youths who are approaching their 18th birthday at the time of their offense may be certified because some juvenile court judges feel that a youth committed to the Commissioner of Corrections as a juvenile "automatically" will be released from state jurisdiction when he turns 18. A third purpose for which certification is utilized is to allow the imposition of a sanction such as a fine or short jail sentence upon juveniles who committed relatively minor offenses and who, it is felt, are not in need of probation or other treatments available through the juvenile court.

In the "Right to Treatment" chapter of this report, the Commission's observations and findings upon the disputed need for a special security facility for the hard-core, violence prone delinquents are discussed. One element in this dispute, the key issue in fact, relates to the question of what resources should or should not be made available through juvenile court process. Until this issue is resolved, some juvenile courts will continue to feel that they are being forced to utilize certification inappropriately because of the failure of correctional authorities to provide what is needed and feasible for the care of some juveniles. In the "Right to Treatment" chapter, the Commission makes certain recommendations which, if followed, should ameliorate this problem and bring needs into sharper focus. With full recognition of this underlying problem and dispute, the Commission has addressed a number of questions and issues relating to certification which can be dealt with apart from the question of the need for a special secure facility.

2.

Commission research revealed considerable ambiguity among juvenile court decision-makers as to whether it would be desirable to specify more clearly the factors that should be considered in assessing a juvenile's "suitability to treatment" and "threat to public safety"--the current statutory requirements for referring a child for adult prosecution. Although the responses of juvenile court judges and county attorneys show the recurrence of certain general themes in their

evaluation of the applicability of these statutory criteria for certification, the enumeration of specific indicators might help promote consistency of reference decisions. On the other hand, such specification might result in a loss of flexibility and individualization. There also is ambiguity surrounding the legal interpretation of these criteria. For example, does the "threat to public safety" criterion imply that certification is legally possible only when the current offense is of a threatening nature? Similarly, does the "unsuitable for treatment" criterion require demonstration that some treatment has been tried and failed, that all existing possibilities for treatment have been tried and failed, or a judgement that all existing possibilities for treatment would fail?

While recognizing the uncertainty surrounding the current statutory criteria, the Commission did not find it possible to make specific recommendations for clarifying the standards at this time. It is necessary first to detail the options available to the juvenile court, a task which involves specifying the responsibility of the Department of Corrections and the individual counties to provide juvenile programs and facilities, particularly for older and more sophisticated delinquents who are properly the focus of certification proceedings. Once the options available to the juvenile court have been specified, there will be a more adequate basis for judging the types of youth who cannot be handled appropriately within the juvenile system. The Commission finds that the group usually labelled "violent and hard-core" offenders actually consists of two groups--those for whom there is hope for treatment within the juvenile system if appropriate programs are developed, and those for whom there appears no basis for such hope.* The Commission finds that adequate programming and facilities for sophisticated, hard-core or violent juvenile offenders do not now exist. It therefore recommends that the Department of Corrections submit to the legislature a plan for providing additional programs/facilities appropriate for such juveniles.

3.

In the ten counties comprising the basis for the Commission study, approximately 12% of the juveniles for whom reference hearings were held were age 14 or 15. Supplementing this figure with responses of judges

*The Governor's Commission on Crime Prevention and Control is conducting a study of the problems of the hard-core, violent juvenile offender. A preliminary report on this research will be available in the near future.

and county attorneys, it would appear that actual certification of 14 and 15 year olds occurs only when a judgement is made that the individual cannot benefit from presently available juvenile treatment programs and facilities. This is more likely to happen in the metropolitan area (represented by Hennepin County in the Commission study) than in outstate areas--a situation attributed to the fact that metropolitan juveniles are frequently more sophisticated offenders.

The Commission expresses concern over the referral of 14 and 15 year olds for criminal prosecution, noting that 16 is the most frequent minimum age for certification in most other states and that this was, in fact, the minimum age in Minnesota until 1959. The practice of certifying younger juveniles is closely tied to the type of programs and facilities available to the juvenile court. If additional programming were available--particularly programming aimed at the young but sophisticated ("hard-core" or "violent") offender--certification of 14 and 15 year olds might not be necessary. The Commission takes note of the regrettable fact that the group of hard-core or violent offenders has an increasing number of children under age 16. Because of this fact there was not a consensus among those appearing before the Commission or among its members in favor of a change in the age limits for certification fixed by existing statutes.

Results of the Commission study indicate that a juvenile's proximity to his 18th birthday often was a consideration in making a decision to refer him for adult prosecution. Reasons for this consideration were generally (a) that the youth nearing 18 has a "right" to be treated as an adult and (b) a widespread impression that the Department of Corrections "automatically" releases juveniles committed to its care at age 18, providing insufficient time to effectively treat or rehabilitate a child committed shortly before his 18th birthday. While considerations of a child's "maturity" may be appropriate for the juvenile court to weigh in making a reference decision, the mere fact of a juvenile's chronological age, i.e., his nearness to 18, should not be the primary determinant of certification. Because of this, the Commission recommends that the discharge guidelines and practice of the Department of Corrections be reviewed and revised as needed in light of its legal

responsibility to provide treatment to all youth committed to its care, in order to prevent the possibility of routine release of juveniles at age 18, and in order to secure to such youth their right to appropriate treatment.

5.

Commission research shows that in some counties certification is utilized in cases where the only offenses involved are misdemeanors. Justification for this practice is based primarily on the contention that the dispositions available to the juvenile court are not as appropriate for certain juveniles as are those, such as short-term jail sentences and fines, available to the adult court. Determinations of "appropriateness" in this regard rely on considerations of the child's maturity and age and on the child's need for traditional "treatment" versus his need to be made cognizant, through a court imposed penalty, of the consequences of his actions. In response to this situation, the Commission recommends that juvenile courts develop a fuller utilization of dispositions, such as restitution and participation in work programs already available to them. (See Right to Treatment for a fuller discussion of this issue.)

A related question raised by results of Commission research is whether it is legally possible to refer a child for adult prosecution only on the basis of an offense or offenses which would not be a crime if he or she were over age 18. In some counties, for example, juveniles have been certified for certain liquor violations which, although included in the criminal code, are violations only for persons under age 18. The use of certification in such cases should be discontinued immediately.

6.

The Commission considered several issues concerning the initiation of reference proceedings, one of which revolved around the suggestion advanced by several juvenile court decision-makers (county attorneys) that there should be a statutory provision for "automatic" referrals based on a certain combination of offense type, past record and other such factors. An alternate suggestion was that the county attorney should have the discretion to certify certain types of cases without

the involvement of the juvenile court. In keeping with its position that the county attorney should play an advisory role only in the making of intake decisions and its belief that certification decisions should be based on consideration of the child and his needs rather than solely upon his offense, the Commission recommends against the adoption of any such provision.

Right to Treatment

1.

The Commission has considered and discussed at some length the constitutional issues raised by the treatment orientation of the juvenile justice system and the ramifications of a legal "right to treatment" for juveniles before the juvenile court. The Commission approves the treatment concept in the court and recommends that the Minnesota Juvenile Code be amended to make the right explicit. Because a juvenile before the court is subject to involuntary control by the court for purposes of treatment, the Commission believes that a constitutional right to receive treatment follows and the right is therefore implicit in the statute. An amendment to the code would clarify the role of the juvenile courts and of agencies and institutions to which the courts commit their wards by making specific their obligation to provide treatment for all youths found to be delinquent. Phrased in the alternative, it should be made specific in the statute that court intervention which does not provide needed treatment to the juvenile violates his legal rights.

2.

The Commission finds that the juvenile court is frequently confronted by children who have violated the law but who do not appear to have need for such rehabilitative treatments as the court has authority to order. The use of the certification process in the handling of minor offenses and the use of delinquency dispositions for primarily punitive purposes are indicative of a belief, shared by many courts, that the juvenile justice system should intervene in a punitive role in some cases. A purely punitive function, however, is violative of a child's constitutional right to due process under the current structure of the juvenile court. Punitive sanctions can be imposed only after conviction

in a criminal court process in which all the protections of criminal process are available to the defendant.

The Commission considered at some length the possibility of recommending the statutory creation of a third calendar in the juvenile court, additional to the delinquency and traffic offenders calendars, under which the court would be authorized to order punitive dispositions for juvenile offenders not in need of treatment. It was suggested that the calendar be limited to minor offenses or minor offenders, that is, children who have not committed serious violations, and provide carefully limited sanctions appropriate to the discipline of children. The Commission ultimately decided against recommending such additional authority to the court. Although there appears to be a felt need for a disciplinary court to handle some juvenile offenders, the imposition of dispositions which are purely punitive violates the due process rights of juveniles in the absence of full criminal procedural safeguards. Such procedures are too complex and unwieldy to meet the need of the juvenile court system. In the judgement of the Commission, then, the constitutional issues pose difficulties which override the possible benefits of the additional calendar.

The Commission finds that many of the dispositions which would be properly ordered under the third calendar approach are already available to the juvenile courts and may be ordered as part of a comprehensive treatment plan. Thus, for example, the court may order restitution or work on a civic betterment program as part of the conditions of probation, either following an adjudication of delinquency or possibly even as the obligation of a juvenile whose case is being continued without a finding of delinquency. Such authority, however, may be exercised only in accordance with the juvenile's right to rehabilitative treatment designed to meet his individual needs.

3.

As the concept of right to treatment implies, whenever the state intervenes in the life of a juvenile, it should assume reasonable responsibility to assure that a proper treatment program is provided the juvenile. This requires in the first instance that the court have knowledge and understanding of the treatment options available to it in order

to route the juvenile into the program which offers greatest promise of meeting his needs. In smaller communities, maintaining an up-to-date catalogue of potential treatment resources is a relatively simple task which may be accomplished through informal contact between resources and court services personnel. In larger communities, e.g., Hennepin County, it becomes a more difficult undertaking because of the large number of juveniles and resources involved.[3] It is recommended that the juvenile court either directly or through some other community agency assume responsibility for maintaining a current catalogue of resources available for meeting the needs of juveniles coming under its jurisdiction.

The state's responsibility to ensure that treatment results for the juvenile under juvenile court jurisdiction requires more than a listing of potential resources, however. How may the state assure itself that the juvenile referred to an agency in fact receives the services presumably available through it? Many resources, including all residential facilities, are operated under public auspices (state or county) or are licensed by the state. Licensure requires the meeting of certain standards set by the state. Many such standards relate to physical facilities, record keeping and other matters which can be met even while the individual needs of a particular juvenile are neglected.

In the use of private agencies, the court should require that progress reports be submitted periodically for each juvenile under care. When the juvenile is committed to the Commissioner of Corrections, it appears that the juvenile court is without authority to require that progress reports be submitted to it.[4] However, there is little doubt that the state agencies would be entirely willing to participate in a reporting plan. In fact, at least one state facility already makes progress reports to the committing court.

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[3]The Commission notes with approval that the Governor's Commission on Crime Prevention and Control has made a grant of recent date to Hennepin County for the purpose of compiling such a resource file.

[4]In re WELFARE OF M.D.A., December 19, 1975. Although this case did not deal with the specific subject of progress reports, it held that authority over the juvenile after commitment to the state is placed by statute in the hands of the Commissioner of Corrections.

In any case the responsibility which the courts must exercise in determining the juveniles' needs for protection and treatment and assessing how those needs may best be met require that courts and court services stay close to treatment resources. Recognizing the physical size of Minnesota and that many out-of-state resources are utilized by the courts, it would seem impractical to suggest that every judge and probation officer visit each program which is used by them at least annually. It is recommended, however, that arrangements be made for personal visits by court personnel to the agencies at least on some kind of planned and possibly rotating basis.

Just as the court can benefit from information regarding state and private treatment programs, so the Department of Corrections should benefit from input by courts and community resources. While the jurisdiction of the court is terminated by commitment to the Commissioner, the interest of the court and the community in the proper treatment of the child and the appropriate timing of his return to the community environment continues. Because of their special knowledge of the environment to which the child must return upon his release from a juvenile institution, the court and representatives of community treatment resources should be given an opportunity to be heard prior to the release of a juvenile from an institution. The Commission therefore recommends that the Department of Corrections develop and adopt a procedure which would provide opportunity for input from the juvenile's home community prior to his release from an institution.

4.

The findings of the study indicate that there exists some confusion among the juvenile courts as to whether the Minnesota Juvenile Court Rules are binding or merely advisory. The Commission recommends that the rules be reviewed by the Juvenile Court Judges for purposes of making necessary changes. Questions regarding the binding effect of the juvenile

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[5]The Department of Corrections has developed a new statement on release criteria which reached the Commission at too late a point to be considered in its deliberations.

court rules would be eliminated if they were then adopted by the Supreme Court.

Although the Minnesota Juvenile Court Rules require procedures which incorporate appropriate due process protections in the Minnesota juvenile courts, the Commission finds carelessness in some courts in adhering to the requirements of the rules. The Commission feels particular concern that some juveniles may be deprived of the protection of legal counsel in cases where dispositions might be severe. The juvenile courts should be especially sensitive to the possibility that a child may not be able to recognize his own need for counsel. Frequently the need for counsel simply is the need to have a trained spokesperson available to effectively present the juvenile's case, to see and discuss the problem from the child's side. The findings clearly indicate that many children feel intimidated in the presence of the court, regardless of the degree of formality with which the hearing is conducted. It is believed that the representation of these juveniles by counsel would assist the courts in assuring that their cases are fully presented and would increase juvenile cooperation and participation in the hearings. The courts should be reminded that, where a juvenile is not represented by counsel, it becomes the primary responsibility and duty of the court to see that the case is fully presented and to assure itself that the rights and interests of the juvenile are fully protected.

The Commission finds that there is need in many jurisdictions for more frequent representation of juveniles by counsel in the juvenile courts. The Commission recommends that (1) the Legislature expand the role and budget of the state public defender's office to permit that office to represent juveniles whenever it appears to the court that there is a strong probability the juvenile will be removed from his home; (2) the county boards of each county should be advised that there is a need for legal services in the juvenile courts and should be requested to give priority to the expenditure of local funds for those purposes; and (3) the county boards should explore alternative means of financing this service, including multi-county cooperation. A juvenile appearing in court on a delinquency charge commonly will be in need of a spokesperson to help present his side of the case. This is ordinarily the function

of an attorney. But there is also a role which trained volunteers might perform, particularly when possible dispositional alternatives are being considered. A valuable function can be performed by volunteer or citizen aids in developing and identifying resources which the court can utilize and in helping the juvenile make effective use of them.

5.

A legal right to be treated means nothing if the treatment resource needed is unavailable. The Commission received testimony on the current dispute as to what should be made available or could be made available for the small number of offenders who are identified as requiring treatment in a physically secure facility. The Commission does not recommend the construction of a special facility for these offenders for reasons set forth in the main body of this report. Neither does the Commission endorse the tentative proposal presented by the Department of Corrections which would require that such juveniles be certified to participate in a special program without regard to the maturity or immaturity of the individual juvenile involved.

Human behavior, including serious acts of delinquency, is the product of the immediate environment as well as the past experiences of the individual. Unfortunately decisions as to what is required to physically contain and control an individual assumes that a pattern of delinquency, which may involve acts of violence, represents an internalized constant which the individual carries with him from setting to setting. This underlying though unexpressed assumption sometimes leads even well trained professionals to conclude too quickly what does or doesn't work for certain groups of offenders.

This does not mean that the Commission feels that Minnesota should settle for the status quo. It finds and shares the widespread concern felt by juvenile courts about the reduction in the number of state operated programs for juveniles which has occurred over the past few years. Even though the objective of the Community Corrections Act to resolve the problems of delinquent youth in their own communities whenever possible is strongly endorsed, it must be recognized that there are youth for whom no appropriate program is available locally. In some cases the primary

need of even a serious offender is respite from the community environment. Department spokesmen justify the closure of certain programs and facilities by pointing to the reduced populations they were serving with resulting per capita costs which appeared prohibitively high. This argument ignores the alternative options which were potentially available. It would have been possible, for example, to have lowered the populations of Red Wing and Sauk Centre by assigning some of the youth admitted to them to the programs subsequently closed.

The net effect of current Department of Corrections policy seems to be a reduction in state programs designed to provide the treatments needed in juvenile corrections.[6] The Commission finds that there is a lack of variety in current programs offered by the state and that additional programs are needed, but notes that this is not to recommend additional state beds but a reallocation of them amongst more diversified programs. In fact, no evidence was presented to suggest that there is a present need for added capacity at the state level. Widespread concurrence was found that the maintenance of only two programs, each serving a specific geographical area, represents an undesirable and unsound narrowing of resource options. Opinion was found also that both facilities presently used are too large to incorporate easily the flexibility needed to meet very diverse youth needs. Therefore, the Commission recommends that the Department work toward the establishment of additional programs, designed to serve smaller and more diversified populations than those presently occupying Red Wing and Sauk Centre. Such development also should reduce the number of youth served in these two facilities.

Furthermore the Commission believes that the attitude of the leadership for such development is a crucially important ingredient for its success. What is required is a willingness, even an eagerness, to help design, establish and evaluate programs which offer promise of greater effectiveness in meeting the problems of delinquent youth. Without such an attitude and interest, the kind of leadership required for a full and

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[6] Programs closed by the Department of Corrections in the past ten years are the Youth Vocational Center, Rochester, St. Croix Camp, St. Croix, and the Minnesota Metropolitan Training Center, Lino Lakes. (Two cottages at the Lino Lakes facility currently are utilized for youth from Anoka County.)

fair exploration of various possible new program options will not be forthcoming.

The field of juvenile justice is in a fluid state. Inability to fully foresee the implications of certain changes now in process argues against the construction of expensive added facilities which might quickly become obsolete. The Department should adopt a highly pragmatic approach to the location of new programs, seeking to utilize existing facilities which might be leased if necessary. The Department also should undertake continuing assessment of the impact of new programs upon its capacity to cope with more difficult, aggressive youth. More diversified programming, serving smaller groups of youth, may continuously erode away that small number of juveniles whom the Department feels cannot be handled within present juvenile programs. In fact, some of the youth cited as examples of such juveniles appear not to require care in a physically secure facility so much as removal from the community for longer periods than youth are retained at Red Wing or Sauk Centre.

The Commission finds, too, that there is a felt need for more programs, personnel, and facilities in each of the sample counties surveyed. While the specific needs vary from county to county, all counties share the difficulty of bearing the cost of expanded programs and facilities. The Commission recognizes that the Community Corrections Act is an initial first step in providing needed additional financial support for local services. However, testimony indicates that the level of support provided by the act is insufficient for many counties. The Commission therefore recommends that the Legislature review the experience of the counties already participating in the program to more fully assess its impact and possible need for amendment or increase in the level of funding provided.

CHAPTER II

INTAKE, DETENTION AND DIVERSION

A basic premise underlying the following discussion is that the intake process should be geared to the purposes of the court and must be conducted with an awareness that the court is only one of many agencies intended to provide treatment or "care and guidance" for children. The intake process into the juvenile court must deal first with questions of jurisdiction, such as the age of the juvenile and the likelihood that he violated a law or committed a status offense. But it is essential that intake look beyond the alleged offense in an effort to determine which children can be provided with appropriate care and treatment without recourse to formal court action (and if so, where) and which children require the court's formal intervention.

A study of intake should be based on an examination of the adequacy of the process in light of the court's purpose. The Commission looked at current intake procedures in ten sample counties and reviewed possible strategies for their improvement. The descriptions and opinions upon which the analysis in this chapter relies were gathered primarily from questionnaires and interviews with judges, probation officers, county attorneys and law enforcement officials in each sample county, supplemented by numerical data provided by the Governor's Commission on Crime Prevention and Control's recent study of juveniles brought into court during two months of 1975.

This study defined intake as that level of processing, usually centered in court services or the county attorney's office, or both, which has the major responsibility of determining whether or not a petition alleging delinquency shall be filed in a particular case. Intake procedures usually involve a screening of cases with the result that some cases are diverted to another agency or person in lieu of petition, while some others may be dismissed altogether. Intake is the gatekeeper of the court, the final step in a series of events which determines whether the child shall appear in court.

Although not included in this narrow definition of intake, law enforcement agencies and schools contribute heavily to the intake process. They refer cases to intake, they may practice diversion, and they screen out of the justice system large numbers of juveniles who have committed offenses. They operate at what may be called the referral level, making the initial contact with the child and transferring some cases to the intake level. Several police and sheriff's department officers, but no school officials or teachers, were interviewed to find out what action was being taken prior to intake. Law enforcement screening and the use of detention will be discussed prior to consideration of intake per se.

Law Enforcement Screening and Supervision

Because written reports often are not filed and analyzed on each law enforcement contact with a juvenile, sheriffs and police chiefs usually cannot describe with precision the degree of screening carried out by their officers. Nevertheless, it is safe to say that in most sample counties fewer than 50% of the juveniles apprehended for an offense were actually referred to the county attorney or court services for further intake processing, and there were indications that in at least three counties, fewer than 25% were referred. Olmsted and Pope counties demonstrate the great range of screening practices. In 1975, the Rochester Police Department, which accounts for most police activity in Olmsted County, reported that fewer than 9% of juveniles arrested were referred to "Juvenile Court or Probation Department." In contrast, over 50% of all apprehensions were sent to the county attorney in Pope County. The police chief of Glenwood in Pope County explained that release to parents and release with reprimand was thought not to be effective, and that the firm knowledge that those apprehended would go directly to court served as an important deterrent.

Three factors were mentioned frequently as criteria considered by officers when deciding whether to refer a juvenile to the intake level:

1. seriousness of the offense
2. past record or past contacts with the police
3. attitude of the juvenile

It is striking that attitude was mentioned equally as often as the relatively more objective factors of offense and past record. Several

respondents placed special emphasis on attitude. This finding is in line with at least one segment of the research literature, as illustrated by the work of Piliavin and Briar, who found that police perceptions of "demeanor" were of critical importance in determining who went to court.[1]

As a criterion for screening, "attitude" may include several kinds of subjective judgements which officers must make. Does the juvenile admit and realize that his actions are wrong? Is he remorseful and has he learned from this mistake? Is the juvenile concerned and do the parents seem concerned and willing to provide the necessary guidance? Is he defiant? Bad attitude may be indicated by not caring what happens--for example, when the juvenile says that it won't make any difference what happens to him, or that he's not going anywhere in life anyhow.

In essence, the officer using "attitude" criteria is making an on-the-spot judgement about complicated psychological and motivational processes, regarding which children require further intervention and treatment by the system and which do not. Youths with poor attitudes are thought to be more likely to continue as delinquents and are more likely to be brought into court.

Most county attorneys and probation officers with substantial intake responsibilities felt that police and sheriff's officers were doing a good job of screening juveniles. The chief complaints were:

1. Some officers, typically described as young and inexperienced, send in cases that are simply too petty for the court to bother with.
2. Police tend not to do as effective investigative work on juvenile cases as they do on adult cases. They are sometimes less careful in the gathering of evidence and their reports are not as complete.
3. Police are often interrogating juveniles with neither parent present, in apparent violation of Minn. JCR 2-2 (1), which states that: "The right to remain silent shall include the right of the child in custody not to be interrogated by a representative of the state except in the presence of at least one of his parents...."

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[1] Irving Piliavin and Scott Briar, "Police Encounters with Juveniles," American Journal of Sociology, 70, 2 (1964), 206-214.

Aside from making apprehensions and screening decisions, police agencies also may be involved in counseling, arranging restitution and establishing informal supervision programs for juveniles in lieu of sending them to court. Law enforcement respondents were virtually unanimous (all but in one county) in approving the suggestion that delinquency could be better controlled if informal police supervision were used more often. Among the suggestions for such programs were having police serve as unofficial probation officers, having police assign the juveniles to work for the victim or the city or county, and requiring the juveniles to visit the police station and check in periodically with the juvenile officer. Most police respondents felt that police tend to become more familiar with the juveniles and their environment than other justice system officials and are better able to develop a working bond and rapport with the youths. One sheriff suggested that work programs like washing police cars and picking up littered beer cans cut down the hero status and peer prestige sometimes associated with going to court.

Although respondents almost unanimously favored the idea, only one-third indicated that informal police supervision had increased over the past five years; another third said its use had decreased and the remaining third said it was used to about the same extent. The primary obstacle to further implementation was simply lack of manpower and resources; officers were needed for higher priority tasks like patrol and apprehension. Several respondents also felt they were deterred by changes in procedures relating to juvenile rights and by court policy in their counties.

Informal police supervision evokes an image of a trusting relationship between a confused youth and a benevolent officer--a person-to-person relationship free of the formality and bureaucracy of the court. Nevertheless, there are obstacles to plans which directly involve informal police supervision. For one thing, juvenile respondents reported more resentment toward the police than toward judges and probation officers. (It must be remembered that our sample of juvenile respondents was not representative; this finding is only suggestive.) Furthermore, as one dissenting voice among police respondents noted, there is an important role conflict between investigation and supervision. The role conflict

does not apply to simple counseling by the officer, but it does affect probation-like arrangements and work programs. It may be improper for police, in effect, to find the youth guilty and impose a sentence without the usual rights afforded by court procedure.

This does not mean, however, that police should be discouraged from diverting youths to outside agencies and programs not run by the police. By far the great majority of juveniles screened out by police are simply released, released with reprimand, or brought in to talk with the juvenile officer, but police respondents in six counties reported the availability of at least one outside program that is used for diversionary referrals. The Youth Diversion Program in Hennepin County received 505 referrals from police agencies in 1975, with indications that most came from the suburbs rather than Minneapolis. However, it appears that most departments are referring only small numbers of juveniles to diversion programs and, unlike YDP, most of the programs available (for example, detox centers, mental health centers and shelter homes) seem to accept only specialized cases rather than offering more comprehensive services.

Detention

In theory, the decision to detain is not an integral part of the intake process, since it is a separate decision using separate criteria. However, it is possible to argue that continued detention may affect the court's view of the youth and its subsequent disposition of his case, just as inability to meet bail affects conviction rates in adult court. Moreover, detention is one of the juvenile's first major contacts with the justice system, and is likely to color his perceptions of that system and affect his responsiveness to treatment. The quality of the detention experience thus should be of concern to officials at the intake level. Earlier this year, the state legislature passed major changes to the statutes governing detention which became effective August 1, 1976. The following section of this chapter reports only upon the use of detention during the period prior to August 1, 1976 when the previous statute was still in effect.

A major conclusion of several recent examinations of detention practices is that the number of juveniles detained could and should be cut drastically. Rosemary Sarri, in Under Lock and Key: Juveniles in Jails and Detention, suggests that "criteria for detention should be explicit and limited solely to acts that would be felonies requiring detention if committed by adults."[2] The Wisconsin Council on Criminal Justice has recommended that "There should be an 80% reduction in the number of secure detention admissions statewide."[3]

Under the previous statute (in effect until August 1, 1976) juveniles could be detained only "where the immediate welfare of the child or the protection of the community" required it; if neither condition existed, the juvenile was to be returned to the custody of his parents, guardian, custodian or other suitable person as soon as possible.[4] The available data suggest that detention was used far more frequently than these standards would have allowed.

In 1975, 16,124 juveniles were held in secure detention facilities for an average of 3.46 days.[5] Information regarding the offenses alleged against these juveniles was made available to our staff by the Department of Corrections for eight of our sample counties (Hennepin reports its data separately and uses a different format, and Beltrami did not submit complete reports to the Department). In these eight counties, 1695 boys

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[2]Rosemary Sarri, Under Lock and Key: Juveniles in Jails and Detention, (Ann Arbor, Michigan: National Assessment of Juvenile Corrections, 1974), p. 68.

[3]Wisconsin Council on Criminal Justice, Juvenile Justice Standards and Goals, Madison, Wisconsin, December 1975, p. 50.

[4]The revised statute changes the circumstances under which detention is allowed. It clarifies and restates the previous statutory criteria and then adds that detention will now be allowed only when it is likely that the child will "not return for a court hearing" or will "not remain in the care or control of the person to whose lawful custody he is released." At the same time, those charged only with status offenses can no longer be placed in a secure detention facility unless they have previously excaped from a non-secure shelter care facility.

[5]Minnesota Department of Corrections, Persons Released from Local Corrections Facilities, 1975, Table 3. The number is based on those held in juvenile detention centers and in unclassified, holding, lockup and jail facilities, but not in juvenile treatment facilities.

and 858 girls were placed in detention in 1975. In order to consider only the more serious cases and to remove from the analysis any youths who simply were being held for a few hours until their parents could pick them up, Table I reports only on those youths who were detained longer than 48 hours. Unfortunately, the large number of unknown offenses plus ambiguities in the offense categories make a precise analysis difficult. One of the major problems is that there are no separate categories for status offenders on the report forms used by the Department; instead, they are lumped together with the miscellaneous misdemeanors and unknowns.[6]

TABLE 1

JUVENILES IN DETENTION LONGER THAN 48 HOURS, BY OFFENSE CATEGORY, IN EIGHT SAMPLE COUNTIES (EXCLUDING HENNEPIN AND BELTRAMI)

	Boys		Girls	
	Number	Percent	Number	Percent
Felonies	52	10.0%	1	0.4%
Gross Misdemeanors	4	0.8	0	0.0
Misdemeanors Against Persons	10	1.9	5	1.9
Misdemeanors Against Property	70	13.5	8	3.1
Miscellaneous Misdemeanors	146	28.2	50	19.1
Traffic Violations	2	0.4	0	0.0
Unknown	234	45.2	197	75.5
Total	518	100.0	261	100.0

Note: Based on analysis of data provided by the Department of Corrections.

In spite of the large number of unknown offenses, the relatively small number of felonies compared with the much larger number of misdemeanors suggests that "protection of the community" could have been a genuine factor in only a small proportion of detention decisions. Data from Hennepin County, arranged in Table 2, provide confirmation for this conclusion by indicating that 44.3% of the boys and 76.7% of the girls admitted to the detention facility were charged with status offenses.

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[6] Thus, for example, at least half of all admissions to the Arrowhead Juvenile Center in Duluth in the categories of miscellaneous misdemeanors and unknowns were status offenders. See remarks in the Department of Corrections report, Ibid.

TABLE 2

JUVENILES ADMITTED TO DETENTION FACILITY IN HENNEPIN COUNTY, 1975, BY OFFENSE CATEGORY.

	Boys		Girls	
	Number	Percent	Number	Percent
Major Against Person	201	9.1%	28	2.9%
Minor Against Person*	157	7.1	59	6.1
Major Against Property	660	29.9	61	6.3
Minor Against Property	89	4.0	38	3.9
Traffic	12	0.5	2	0.2
Chemical Abuse	110	5.0	39	4.0
Status Offenses	976	44.3	747	76.7
Total	2205	99.9	974	100.1

Note: Based on data provided by Hennepin County Court Services.

* "Minor Against Persons" category consists primarily of non-violent offenses.

There are further indications that Minnesota may have overused and misused detention under the previous statute. In several counties, likelihood that the child would run away was listed as one of the major factors in detention decisions, even though use of detention for such reason was not expressly authorized by the previous statute.[7] Respondents in one western county explained that they at times use the two-week evaluation stay at the Regional Detention Center in Moorhead as a two-week jail disposition; this occurs after charges are admitted in court. The director of the Arrowhead Juvenile Center in Duluth said that local judges had occasionally used the facility for a two-week jail sentence rather than for diagnostic purposes, but this wasn't done much anymore. In several counties, respondents, including judges, expressed the belief that two or three days behind bars would be beneficial for many juveniles, and some asked that the court be explicitly allowed to give short-term, Huber-type jail or detention dispositions. Given these attitudes, it is not surprising that detention may have been used in many cases for purposes not authorized by the previous statute.

The data in Tables 1 and 2 are not conclusive. It has been argued that detention statistics are misleading. For example, a juvenile may

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[7] In response to an open-ended question about detention criteria, police respondents in six counties and judges in five counties listed likelihood of running away or of not appearing in court as a major factor.

be detained as a status offender when in fact he also has committed criminal offenses or was running away from a state institution. At this point, it is not possible to determine the extent to which these factors operate here. Nevertheless, the information available indicates cause for concern about the way detention has been used.

The Process of Making Intake Decisions

Once referrals have been received from law enforcement, schools, parents and citizens, four distinct arrangements were identified in our ten sample counties for making decisions as to whether a petition will be filed in a particular case. These differing arrangements are indicated in Table 3.

TABLE 3
TYPES OF INTAKE ARRANGEMENTS

TYPE I	TYPE II	TYPE III	TYPE IV
COUNTY ATTORNEY	COURT SERVICES	MIXED CA/CS	INTAKE COMMITTEE
Dakota	Nobles	Hennepin	Pennington
Olmsted	St. Louis		
Sherburne			
Pope			
Beltrami			
Otter Tail			

Type I: County Attorney[8]

In Type I counties referrals are sent directly to the county attorney's office, which examines the case, decides whether it should come into court, and draws up the petition if that option is chosen. Probation officers may be asked for their recommendation if the juvenile is already on probation at the time of apprehension.

In five of the six Type I counties, the criteria for screening is limited almost exclusively to sufficiency of the evidence to support

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[8]While this pattern is very common in Minnesota, intake screening is handled primarily by the judge or court services personnel in most other states. The district attorney is directed by statute to monitor the screening process in only five states: Iowa, Minnesota, Nebraska, Texas and Vermont. See Mark Levin and Rosemary Sarri, Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States (Ann Arbor, Michigan: University of Michigan), pp. 26-27.

prosecution, and almost all cases are sent on to court. Many statements made by county attorneys graphically illustrate this point. One assistant county attorney said: "If I think there's a violation....I go ahead. I view my role as trying to prove the petition, then let others worry about the disposition." Another indicated that in 95% of the cases the criterion is whether the facts indicate probable conviction, and added that a petition is filed "in almost every case that comes across my desk." And another reported that the general policy was to petition if the offense could be proved, with very little actual screening of cases taking place. In Dakota County, where the court heard 752 delinquency cases in 1975, the county attorney estimated that five cases were screened out as being too petty to bother with and about 10-15 were rejected because the child was too young.

In these five counties then, the intake process screened out few cases and in essence simply passed on to the court the decisions made by the police, schools or parents. Of all six Type 1 counties, only Olmsted provides significant screening at the intake level. The county attorney chooses cases he feels comfortable with sending to court services, which then evaluates each youth to determine his suitability for placement in the court services-operated diversion program. Roughly 60% of the cases are diverted, with only 72 petitions filed in this fairly large county in 1975.

Type II: Court Services

With rare exceptions, referrals in Type II counties are sent directly to court services, which determines what cases are to be diverted, dismissed, or recommended for petition. In 1975, court services in Nobles County placed 40% of the incoming cases into its new diversion program. In Nobles County, the cases which court services feels should be processed formally through the court are sent to the county attorney, who draws up the petition, which may then be reviewed by the judge. In St. Louis County, the proportion of cases diverted is much smaller, probably less than 10%.[9] The county attorney meets with court services twice each week

[9] 738 petitions were filed in St. Louis County in 1975. No full record of diversion was kept, but our respondent estimates that far fewer than 100 were diverted.

to examine the legal aspects of cases which are to be sent to court and to choose the formal charge.

Type III: Mixed County Attorney/Court Services

Type III provides significant decision-making spheres for both parties. The intake section of court services in Hennepin County screens status offenses and misdemeanors. It may divert a case or simply close it at intake. Recommendations for petition are sent to the county attorney, who then examines the case on legal grounds and decides whether to approve prosecution. Felonies, however, are screened first by the county attorney, and no felony can be diverted without the approval of that office. Of 6969 referrals made to the intake level in Hennepin County in 1975, about 45% were diverted or closed at intake.

Type IV: Intake Committee

The intake committee in Pennington County includes representatives of the county sheriff, Thief River Falls police, county welfare and the probation office; it does not include the county attorney. The committee meets once each week to decide which incoming cases should be diverted and which petitioned. A few cases each year (the sheriff estimates six to ten from his department) are sent directly to the county attorney without a full meeting of the intake committee. Record-keeping has been incomplete, but roughly half the cases considered by the committee are not sent on to court. The county attorney has the authority to decline recommendations to prosecute, but this happens rarely, if at all.

Characteristics of Youths Brought Before the Court

In this section, the "products" of the intake process, i.e., those youths who are referred to the court, are examined. The Governor's Commission on Crime Prevention and Control has provided basic information about the characteristics and offenses of these youths through their recently completed study of juvenile court records in ten counties.[10] The

[10] Six of the counties--Hennepin, Nobles, Olmsted, Otter Tail, Pennington, and St. Louis--were included in our sample, and four--Blue Earth, Ramsey, Stearns and Washington--were not. Most of the figures in this section were obtained directly from computer printouts supplied by the GCCP&C. See also their report, A Preliminary Analysis of the Juvenile Offender Within the Minnesota Juvenile Court System, September 1976.

Governor's Commission on Crime Prevention and Control study examined court records covering the months of January and June, 1975. Their sample included 1440 juveniles who were charged with 2737 separate offenses during this period.

Several features of the GCCP&C study must be understood if the results presented below are to be interpreted properly:

1. There are differences in the way data was collected in the various counties. In Hennepin, the sample was drawn from juveniles brought to court intake, including many who were subsequently diverted from court or had their case closed at intake. In the remaining nine counties, the sample was drawn only from those petitioned into court. Thus, one must be careful when making direct comparisons between Hennepin and the remaining counties.

2. Since data was collected only for those petitioned into court (with the exception of Hennepin), it was not possible to determine how the criteria of sex, race, age, offense and past record were utilized in choosing among the alternatives available at intake. It is possible, however, to report on the characteristics of those referred into juvenile court in nine counties and to the court intake office in Hennepin County.

3. The sample of juveniles was heavily weighted toward the metropolitan areas. Of 2737 offenses studied, 1931 (70.6%) were drawn from Hennepin County. Thus the statewide results tend to overrepresent the pattern found in the metropolitan counties. For this reason, the data for Hennepin and the five outstate counties studied both by the GCCP&C and the Supreme Court Juvenile Justice Study Commission (Nobles, Olmsted, Otter Tail, Pennington, St. Louis) will be reported separately.

4. In general, the GCCP&C performed its analyses in terms of each separate offense rather than each separate juvenile. Thus, an individual charged with three offenses would have his race, age, sex, and so forth counted three times in the analysis, while an individual charged with one offense would be counted only once. This may create problems in interpretation if one group of people is more likely to be charged with multiple offenses.

Background Characteristics

Although race/national origin data are not provided in many of its analyses, such data are provided for the 1440 juveniles as a group. As the following table indicates, the percentages of the major minority groups are higher than their percentages of the general population. This

is not surprising in view of their disadvantaged status in our socio-economic system.

TABLE 4

RACE/NATIONAL ORIGIN OF OFFENDERS IN SAMPLE

	Number	Percentage
White	1052	73.1
Black	151	10.5
Native American	65	4.5
Spanish American	9	.6
Oriental American	1	.1
Other	3	.2
Unknown	159	11.0
Total	1440	100.0

The proportion of offenses attributed to minority youths also is well above their share of the general population. Since many files in the outstate counties did not contain information about race, Table 5 is restricted to Hennepin County.[11]

TABLE 5

PERCENT OF OFFENSES REFERRED TO HENNEPIN COUNTY COURT INTAKE, BY RACE/NATIONAL ORIGINS

	Percent of Offenses, 1975	Percent of General Population, Hennepin County, 1970 Census
White	75.3%	96.7%
Black	15.8	2.1
Native American	8.4	0.7
Others	0.4	0.5
Total	99.9	100.0

Note: Based upon 1838 offenses where race could be determined. This table probably exaggerates the situation, since the percentage of minorities, especially Native Americans, in the general population of Hennepin County has risen since 1970, and because minority populations tend to be more concentrated in the younger age brackets than the general population.

[11] The Commission believes that juvenile court records should include racial and ethnic data because of its significance to the identification of public practice and the formulation of public policy.

Although the number of girls charged with delinquency has been increasing nationally more rapidly than boys, roughly only one of every five offenses alleged was committed by a female. 17.9% of the offenses referred to court in the five outstate counties were attributed to females, while 22.9% of those referred to court intake in Hennepin County were attributed to females.

The age of juveniles at the time of referral for each offense is shown in Table 6.

TABLE 6

AGE AT TIME OF REFERRAL

To Court, Outstate Counties		To Court Intake, Hennepin County	
Age	Percent	Age	Percent
13 or Less	7.4%	13 or Less	15.7%
14	15.9	14	14.0
15	17.2	15	21.0
16	30.1	16	24.3
17	28.4	17	23.5
18 and Over	1.0	18 and Over	1.6
Total	100.0	Total	100.1

While juveniles referred in Hennepin County appear to be slightly younger, this may only reflect the different ways by which the samples were chosen: younger juveniles may be more likely to have their case closed at intake rather than sent into court.

Offenses

As Table 7 demonstrates, the great majority of the offenses examined by the Governor's Commission on Crime Prevention and Control study were either property offenses or status offenses. In fact, murder, rape, aggravated assault, aggravated arson and aggravated robbery accounted for only 2.9% of the offenses in Hennepin County and 0.7% in the five outstate counties.

TABLE 7

TEN MOST FREQUENT OFFENSES

Hennepin		Outstate	
Offenses Referred to Court Intake	Percent of Total	Offenses Referred to Court	Percent of Total
Theft, Less Than $100	12.3%	Use of Intoxicants	18.6%
Absenting	12.2	Burglary	12.2
Burglary	10.4	Theft, Less Than $100	11.1
Use of Intoxicants	6.8	Unauthorized Use of Motor Vehicle	7.4
Unauthorized Use of Motor Vehicle	5.6	Theft, More Than $100	7.4
Theft, More Than $100	4.4	Absenting	6.8
Curfew	4.4	Damage to Property, Less Than $100	4.4
Simple Assault	4.1	Truancy	3.0
Incorrigible	4.0	Damage to Property, More Than $100	2.7
Damage to Property, Less Than $100	4.0	Curfew	2.0

One of the most striking features of the offense data is the large proportion of status offenses (31.5% including possession and consumption of alcohol). While the overall proportion of status offenses was roughly the same in Hennepin and the five outstate counties (30.6% of those referred to Hennepin County Court Intake and 32.1% of those referred to court in the outstate counties), the pattern of offenses was very different. Liquor violations accounted for nearly three-fifths of the status offenses in the outstate counties but less than one-fourth in Hennepin County. Because each offense is considered separately in this study, the reader is cautioned that these figures do not necessarily indicate the proportion of juveniles referred solely for status offenses.

Those charged with status offenses were disproportionately female and disproportionately white. Roughly 58% of all offenses attributed to females were status offenses, while 24% of those attributed to males were status offenses. When we examine race/national origins, we find that 35% of the offenses charged to whites were status offenses, while the corresponding percentages were 15% for Blacks and 18% for Native Americans.

This brief sketch indicates that juvenile courts continue to deal with substantial numbers of youth who come into the court for non-criminal activities. The Commission did not examine the issue which often is raised concerning the possible removal of the status offender

from the jurisdiction of the juvenile court. The issue is a complex one, raising as it does the question of society's willingness to eliminate legally imposed sanctions for school truancies and runaways or to find other means of applying whatever sanctions are employed.

It has been suggested that one means of responding to this controversy would be to move the handling of the status offender to the neglect jurisdiction of the juvenile court. Since the Commission had no opportunity for extensive examination of this problem, it makes no specific recommendation on the matter but does point out the need for further public inquiry.

Diversion

The Controversy Over Diversion

The concept of diverting youths to another program or agency instead of petitioning them into court evoked significant differences of opinion, at times sharply worded, among county attorneys and probation officers. The following arguments supporting diversion emerged during our interviews.

1. Diversion prevents the stigmatization and perhaps the labeling as delinquent or criminal that may result from a youth's appearing in court and acquiring a juvenile record. Despite its original purpose of protecting young people from the stigma of a criminal conviction, handling by the juvenile court still may represent a damaging experience for a juvenile.
2. Diversion cuts down the backlog of cases by handling petty and routine cases outside of court, thus allowing the judge and probation staff to concentrate their energies on more serious matters. Minor cases may be disposed of more quickly and perhaps with greater effect through diversion than through court processing. Reserving the court primarily for serious cases may help preserve the authority and stature of the court.
3. In appropriate cases, diversion can promote greater family involvement in the child's situation by offering parents another chance, sometimes under threat of petition, to better control and guide the child instead of waiting for the court to assume such responsibility.

Opposing arguments hold that:

1. The 90 day continuance provides much the same services as would be available under diversion and results in no formal

record if the child fulfills the conditions and the case is dismissed. Diversion is thus redundant.

2. The juvenile court was originally set up as diversion from the adult system. There is no stigma attached and youths are not harmed or scarred by being in the juvenile court.

3. The court experience is valuable in itself. It impresses the parents and child with the seriousness of the matter and stimulates their cooperation. A perceptive judge often will be able to discover some of the underlying problems during the hearing.

4. Diversion promotes rather than stems delinquency. It is used far too often. It occurs repeatedly at the police and intake levels and reinforces the juvenile's growing feeling that nothing is going to happen to him as long as he remains a juvenile. It is used for the unsophisticated youths who are precisely the ones the court originally was designed to help.

Virtually all probation officers and a slight majority of county attorneys expressed approval of the concept of diversion, though sometimes with reservations. Nearly all of the opposing arguments cited above were voiced by county attorneys. Our research did not conduct the in-depth and long-term examination of specific diversion practices that would be needed to properly evaluate the opinions expressed above.

Nature of Existing Diversion Programs

In addition to Olmsted, all Type II, III, and IV counties, totaling five counties, have diversion options available at the intake level, although St. Louis may be considered a marginal county in this respect. While several diversion options are used by court services in St. Louis county, the numbers of juveniles diverted is very small in comparison with the number of petitions. In the next few pages, we shall discuss the operation of existing diversion programs available at the intake level in these five counties. As Table 8 shows, in three or possibly four of these counties the majority of youths diverted by intake are placed in programs operated by the court itself. Hennepin is the exception, probably reflecting the fact that the wide variety of social services available in this county makes it less necessary for the court to step in and fill the gap or less possible for the court to compete.

TABLE 8

MOST FREQUENTLY USED DIVERSION OPTIONS IN EACH COUNTY

County	Program	Program Serves Majority of Youths Placed on Diversion
Hennepin	Youth Diversion Program (private organization--LEAA and local government funding)	No
Nobles	Court Services-operated program.	Yes
Olmsted	Court Services-operated program.	Yes
Pennington	Operated by Intake Committee under authority and supervision of the court.	Yes
St. Louis	Volunteers in Probation, administered by court services.	Unknown

The services offered within the existing diversion programs vary somewhat from county to county.

1. Hennepin. No attempt will be made to do justice to the wide variety of resources available in Hennepin County. The court intake office operates few programs of its own; Rainbow Bridge (for chemical dependency) is one notable exception. Instead, most cases are referred to outside agencies. One of these, the Hennepin Area Youth Diversion Program, received 700 referrals from court intake in 1975. YDP itself works frequently as a screening and referral agency. First, however, it becomes involved in the sometimes lengthy process of gaining the youth's trust and determining what the basic underlying problems are. Most youths are then sent to more specialized agencies, although YDP has at times developed its own programs to fill necessary gaps. Most notable among these are the chemical dependency orientation sessions for whole families, which YDP feels have worked very well and would serve as a good model for chemical dependency programs throughout the state. YDP describes its basic purpose as helping juveniles get through rough parts of their lives, the difficult growing-up times, without the use of threat or coercion.

2. Nobles. The diversion program operated by court services in Nobles County uses options which are substantially the same as many used by the court itself, ranging from a simple continuance without supervision to a fairly active degree of supervision similar to probation. The diversion agreement may also specify conditions which must be fulfilled, such as making restitution or attending sessions at a local counseling center.

3. Olmsted. The diversion program operated by court services in Olmsted County also includes many features similar to probation. The youth and a court services worker draw up a written contract which may cover restitution, individual and group counseling, or referral to outside programs. The youth is discharged from the program once the terms of the contract are fulfilled.

4. Pennington. Once the Intake Committee feels that a particular juvenile should be diverted, one of its members will meet with the child and parents and will obtain a "verbal agreement" about such matters as curfew and restitution, if minor. A contract or standard probation agreement is not used and usually there is not extensive contact or supervision after the initial meeting, since each member of the committee has full-time job responsibilities elsewhere.

5. St. Louis. Volunteers in Probation, which is one of the programs used for diversion at the intake level, seeks to establish a one-to-one relationship between the juvenile and a volunteer who is expected to act in an unofficial capacity--simply as friend or companion--rather than as an extension of the probation office.

Procedures in Diversion Programs

An examination of the standard operating procedures used by intake to oversee the diversion process in these five counties reveals that the formal sanctions and powers of the court are still much in evidence.

1. Typically, the juvenile must admit informally that he committed the alleged offense before being eligible for diversion. The only county where respondents clearly indicated that this was not the case was St. Louis.

2. The child usually has the option of accepting or rejecting the diversion program, but there is a strong possibility that a petition will be filed if he rejects diversion. (Hennepin reported that although this was a possibility, a petition would not usually be filed.)

3. In all five counties, once an agreement on diversion is reached, intake reserves the right to file a petition on the original offense if the terms of the diversion program are violated. In at least two of the five counties, the juvenile must sign a form waiving his right to a speedy trial so that the petition can be held in abeyance during the course of the program. The general rationale for retaining the threat of petition is to ensure that the child takes the terms of the program seriously. However, respondents indicated that in practice this is seldom used. A petition rarely is filed on the original offense if much time (usually no more than 30 days)

has elapsed. It is thought that the juvenile who violates the terms of diversion is likely to commit a new offense for which he can be brought into court.

Who Is Diverted?

Intake decision guidelines sometimes include broad statements reflecting the basic philosophy of diversion. For example, one respondent wrote that intake should divert from court "children whose needs can and will be met elsewhere with adequate protection to the public." We did not attempt to determine whether intake workers actually tried to make their decisions upon broad principles such as this one or whether routines and mechanical decision rules were the norm. There may, for example, be an implicit rule in some counties that felonies are never to be considered for diversion. The specific factors considered most often by those making diversion decisions included: seriousness of the offense, frequency and seriousness of past offenses and age. In practice, diversion programs primarily reach first- and second-time offenders charged with minor violations. For example, in Pennington County one member of the intake committee reported that most first offenses, if minor, go to diversion, and second and third offenses may be diverted if they are minor or if the child is very young. In 1975 Nobles County diverted 38 status offenses, 47 minor offenses and only one serious offense.

Several writers have warned that concentrating on this less serious portion of delinquent behavior may actually serve to increase the number of children involved with the court rather than reducing it. This applies primarily to diversion programs which are operated by the court itself. The Commission's research does indicate that diversion programs often take in children who never would have been brought to court in the first place if diversion weren't available. In Hennepin and Pennington Counties, court services estimated that only 25-50% of those diverted would have been processed through the court if diversion weren't available. The Intake Committee in Pennington County receives many cases that in the past would have been handled by the juvenile officer or the arresting officer. The police know that diversion is now available, and instead of giving the youth two or three chances on their own, they are more likely to let intake give him two or three chances on diversion. A probation officer

in Nobles County reported that schools were not letting truancies build up as much as they had in the past; more of those cases were being referred to the intake level at an earlier point now that diversion was available.

Future Programs

Probation officers in eight counties and county attorneys and judges in five counties expressed an interest in adding new programs that could serve as diversion opportunities or in expanding existing programs. Most suggestions were for rather specific programs to meet the needs of juveniles with specific types of problems. While some of these programs could be operated by the court, most would be most appropriately conducted by various other community agencies. The proposals were wide-ranging; none emerged clearly as the most prominent. Those mentioned more than once included:

- status-offender diversion
- court-operated diversion
- training and employment programs
- drug/alcohol awareness and treatment
- group homes and shelter care
- family counseling
- alternative education programs within the schools
- education programs for learning disabilities

An Alternative Model of Diversion

One of the more important issues regarding diversion is whether current programs are properly designed to fulfill the basic intentions of diversion. With certain exceptions, we have seen that the primary diversion programs in many counties (1) are operated and staffed by the court, (2) provide services similar to the ninety day continuance and probation, and (3) rely on the formal sanctions of the court to the extent that the right to file a petition on the original offense is retained. For the most part, diversion clearly seems to be embedded within the juvenile justice system. This raises several issues. Diversion programs closely tied to the court may not accomplish the intended purpose of preventing social stigma from attaching to the youth. It is not likely that the community (or the juvenile himself) views a diversion conference conducted at the courthouse as any different from a formal court hearing. In addition, there is an element of subtle coercion implicit in programs

tied closely to the court. The juveniles involved are likely to be aware that agents of the court retain discretionary powers over them and could bring them into court should they not perform satisfactorily. Subtle coercion of this sort may undermine the benefits attainable through truly voluntary participation.

The problems raised above are not meant to suggest that there is no place for diversion programs tied closely to the court. In fact, most respondents who expressed an opinion on the matter seemed to think that these programs were effective in deterring further violations, although there were significant dissents and little in the way of hard data to confirm their opinions. In addition, such programs may be an efficient way to organize the time and energy of the court. Unlike the ninety day continuance without adjudication as delinquent, court-operated diversion does not require the time of the judge. The Intake Committee in Pennington County was initiated by the judge primarily for reasons of efficiency--to reduce the large backlog of cases which had built up. But it must be realized that these kinds of programs are examples of "partial diversion"--diversion from the judge but not from the court as an institution. "Partial diversion" may indeed promote the efficiency of the court, but it should not be assumed that juveniles thereby are being handled in a fundamentally different way. In fact, it may be more logical to think of diversion programs which are closely tied to the court as a pre-petition adjunct to the ninety day continuance.

If we conceive diversion primarily in terms of court-operated programs, we are ignoring an important area of potential treatment which has been far from fully explored. Several writers have proposed an alternative model, known as "true diversion", which includes the following characteristics:[12]

1. Participation should be completely voluntary. Once intake determines that the child is suitable for diversion, the

[12]See Donald Cressey and Robert McDermott, Diversion from the Juvenile Justice System, Washington, D.C.: U.S. Department of Justice, 1974, pp. 3-5; and Andrew Rutherford and Robert McDermott, National Evaluation Program, Phase I Summary Report: Juvenile Diversion, Washington, D.C.: U.S. Department of Justice, Law Enforcement Assistance Administration, September, 1976, pp. 14-15.

threat of a petition should not be used to influence either his initial decision or his continued participation in the program. In other words, the child retains the right to refuse participation without suffering negative consequences.

2. Court involvement should cease completely once the child is diverted.

3. The agency actually conducting the diversion program should be independent of the justice system. It should have an independent source of funds and should control its own staff appointments. It must be capable of resisting "requests/demands and pressures from existing social control agencies" of the court and justice system.

In theory, "true" diversion could provide unique benefits--namely, the possibility of non-authoritative, non-coerced, fully voluntary treatment--which court-operated programs may by their very nature be unable to deliver. It could make possible a relatively intensive involvement early in the child's career without the disadvantages and potential dangers (in terms of community stigma, self-image and so forth) associated with the coercive intrusion of the justice system. However, our research was not designed to prove or disprove the contention that "true" diversion ultimately provides more effective treatment in terms of reducing delinquency. In fact, research on this point around the country has been hampered by the lack of sufficient numbers of "true" diversion programs to serve as subjects. Of the programs we encountered, only the Hennepin Area Youth Diversion Program seriously approached "true" diversion and, even so, it differed from the model on certain essential points.

Changing Intake Procedures

The Present Situation

The key to transforming intake arrangements lies in understanding the role of the county attorney's office. Several factors should be noted in this regard:

1. The Juvenile Court Act states that "Unless otherwise provided by rule or order of the court, the county attorney shall draft the petition upon the showing of reasonable grounds to support the petition." While this statement appears to provide some intake role for the county attorney, it does not explicitly require that he make the basic intake decisions.

2. In the six smallest counties in our sample, the county attorney is a part-time position.[13] Juvenile matters may receive lower priority than adult cases or work for civilian clients.

3. County attorneys are trained to make judgements about questions of law and to prepare for prosecution; several respondents admitted that there were others in the justice system more qualified than they to assess treatment needs at intake.

4. In several counties, the county attorney rarely takes part in detention hearings, non-contested adjudicatory hearings and disposition hearings.

5. In six sample counties, less than 25% of the time spent on county attorney business was devoted to juvenile matters; in the remaining four counties, the proportion was 25-50%. In contrast, most counties have probation officers who work full-time (or close to full-time) with juveniles. For example, in Dakota County, one assistant county attorney assigned half-time to juvenile cases makes most of the intake decisions, while there are ten probation officers working full-time with juveniles. Probation officers thus have far more daily contact with youths, and may become much more knowledgeable about their motivations, family, environment and more aware of community resources.

If treatment capabilities at the intake level are to be increased by introducing more diversion opportunities, it follows that more treatment-oriented expertise must be introduced into the intake process. The county attorney's office, as presently constituted, does not seem like the best choice to take on this role. This contention is exemplified, at least implicitly, by the existing intake arrangements in the sample counties. Of the five counties which have adopted significant use of diversion at the intake level, only one retained the Type I format in which the county attorney makes the basic intake decisions. The five counties which do not utilize diversion significantly are, on the other hand, all Type I counties.

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[13] This is true throughout the state. In another recent survey, 69 of 85 (or 81%) county attorneys responding reported that their position was part-time. Those county attorneys who also conducted a private practice devoted an average of 51% of their total law practice to the position. See Minnesota County Attorneys Council, Summary of Statewide Survey of Minnesota County Attorneys, Initial Report, September 1976, Chapter 1, pp. 2, 4.

Strategies for Change

The Commission considered several possible strategies for incorporating greater treatment expertise into the making of intake decisions. Most county attorneys feel that intake decisions should be centralized in their office; this is true in two of the three sample counties where the county attorney currently has little substantive role in intake as well as in those counties where the county attorney currently has a larger role. The basic argument is that the prosecutorial discretion granted by statute implies that intake must be the responsibility of the county attorney who, more than any other official, is accountable and responsible to the people for the prosecution of violators. One respondent also pointed out that keeping intake out of the hands of court services or some other body close to the court would lessen perceptions that the court was unfair or was acting as prosecutor.

In light of these arguments, one strategy might be to increase the capacity of the county attorney's office to make such decisions based on treatment considerations as well as legal sufficiency considerations. Among the proposals suggested were: (1) that law schools should place greater emphasis upon juvenile matters; (2) that more in-service training opportunities, particularly concerning the theory and understanding of treatment, be provided; (3) that pamphlets or other publications be provided to acquaint attorneys with the variety of treatment alternatives available as dispositions; (4) that multi-county prosecutor's offices be organized to allow one or more attorneys to concentrate more fully on juvenile cases; and (5) that specially trained personnel with a treatment orientation be placed on the county attorney's staff, where they could examine incoming cases for the appropriateness of diversion and make recommendations regarding screening to the county attorney.

The second possible strategy for changing intake has been recommended by several recent national and state level commissions. This strategy proposes that an intake office be established within the department of court services, thus placing intake under the administration of the court. The county attorney's role would be limited to that of legal advisor. Once intake personnel have decided to file a petition, the

county attorney would judge the sufficiency of the evidence and would retain the right not to prosecute if he so wishes. Court services workers either make or participate in making intake decisions in four sample counties, and in four of the remaining six (the Type I counties), they favor some form of change that would provide for their greater involvement.[14]

There are many ways in which an intake office could be organized within the court. One type of intake office is of particular interest because it differs substantially from the procedures used in Type II counties, where intake is already administered by the court through its probation staff. According to the suggested model, the intake workers would form a separate part of court services, would have no supervision or probation duties, and would not perform adversarial functions such as collection of evidence or interrogation of witnesses.[15] The rationale behind this proposal is in part that any roles which increase the confrontation nature of intake will interfere with the sound determination of whether the best interests of the child and the public require formal court intervention. It is also expected that intake workers would become intimately familiar with the wide variety of community resources that could serve as diversion alternatives and would make large investments of time and energy in matching the juvenile's apparent needs to the available resources, thus leaving little time for supervisory duties. In the Commission's judgement, separating intake from the remainder of court services would be more necessary when the "true diversion" model, which removes the child from the justice system altogether, is being implemented than when the court is operating its own diversion program. Another proposal which differs from current practice in the Type II counties recommends that intake should make initial detention decisions and

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[14] In addition to these results from our sample county interviews, 27 of the 35 probation departments in non-sample counties responding to brief mail questionnaires approved the idea of establishing an intake office under the administrative control of the court.

[15] For example, see Jay Olson and George Shepard, Intake Screening Guides: Improving Justice for Juveniles, Washington, D.C.: U.S. Department of Health, Education and Welfare, Office of Youth Development, 1975, pp. 20, 23.

therefore should be staffed 24 hours a day, 7 days a week. In rural areas, 24 hour coverage could be provided by a rotating on-call system involving the judge, intake staff, referees and any remaining court staff that the judge may designate.

The third strategy for changing intake involves the establishment of an intake committee. The unique advantage of this plan is that it brings together many different perspectives and sources of information about the youth and promotes cooperation among the participating agencies. In contrast to Pennington County, where an intake committee now operates, counties considering the adoption of this strategy should consider including the county attorney on the committee.[16] As with the intake office plan, the county attorney would retain the authority to determine the adequacy of evidence to petition, but could not overrule decisions to divert or dismiss.

The major potential drawback of the intake committee arrangement is that the committee might become too unwieldy and cumbersome, particularly if there were deep clashes of viewpoint among the participants and if large numbers of cases required action. While Pennington's committee seems to operate efficiently, it would take further testing, particularly in larger counties, to determine if the intake committee model can overcome this potential drawback. In addition, the existing intake committee in Pennington County, where each member has full-time job responsibilities elsewhere, is not able to take on the more extensive degree of screening envisioned in the proposals for a court intake office discussed above. Either more staff support should be provided or ways should be found to relieve committee members of part of their other job responsibilities.

So far the discussion has focused on arrangements solely at the intake level. The fourth and final strategy suggested focuses on the referral level. The average police officer may be concerned primarily with patrol, investigation and apprehension, but there may be ways to

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[16] Probation staff in Otter Tail and Beltrami Counties, both in the northwestern corner of the state, expressed an interest in this type of arrangement.

increase the treatment expertise available within police departments. The use and training of juvenile officers could be substantially increased and departments could experiment with adding social work-trained people to the staff. These personnel, much like the court intake workers discussed above, would be knowledgeable about diversion opportunities and review cases and make recommendations about police disposition. The same basic plan could be adopted in the schools.

CHAPTER III

CERTIFICATION OR REFERENCE FOR PROSECUTION

In the past few years a number of questions have been raised about the procedure which allows the removal of a child from the jurisdiction of the juvenile court and makes possible his or her prosecution as an adult. In order for a child to be removed from juvenile court jurisdiction in Minnesota, he or she must be age 14 or over, must be alleged to have committed a delinquent act and must be certified as an adult at a juvenile court reference hearing. [Minn. Stat. Sec. 260.125] The final step in this process--the transfer of the child from the jurisdiction of the juvenile court to that of adult (County or District) court is commonly called "reference" or "certification." Questions have been directed both at the legitimacy of the certification procedure itself and at specific requirements and practices within the reference process.

In an attempt to clarify issues concerning certification, the Commission determined that several steps should be taken. First, it would seem necessary to have a basic understanding of the legal context of certification--particularly the statutes and court rules governing its use in Minnesota. Second, it would seem important to determine how the legal parameters are interpreted, implemented and evaluated by decision-makers in the reference process. Third, a description of how the reference process has been used, and of the juveniles who have reached various stages in that process, is needed.[1] This section of the

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[1]Although several research projects have touched briefly on the issue of certification, none have attempted to collect descriptive information on the use of the process--and on the juveniles involved--from the point of initiation of reference proceedings to sentence in adult court. The Minnesota Department of Corrections has information only on certified juveniles who were sentenced to state institutions in the period from June, 1969-June, 1975 (A Profile of Certified Juveniles Committed to S.R.M. 1970-1975, May, 1976). Professor Donald Marshall's Minnesota Juvenile Court Procedure Study contains limited descriptive information on some juveniles for whom reference hearings were held

report, therefore, focuses on three major areas: (1) a description of selected aspects of current reference procedures and practices in the sample counties, (2) a description of juveniles involved in the reference process from the initiation of reference proceedings to sentence in adult court, and (3) a summarization of the opinions of decision-makers in the sample counties on selected certification issues. Throughout, the discussion of actual practices will be put in the context of existing Minnesota legal requirements for the use of certification--the juvenile code and rules of court procedure for both the Probate-Juvenile Courts and Hennepin Juvenile Court.[2]

Description of Current Reference Procedures and Practices

A description of current procedures and practices governing the use of reference for adult prosecution in the ten counties included in this study has been compiled from responses (on questionnaires and in interviews) of county attorneys and judges and from court records of juveniles considered for reference. Topics considered in this comparative description of reference proceedings include: (1) the way in which such proceedings are initiated, (2) the type and sequence of hearings held, and (3) the information and decision criteria utilized in making the reference decision itself.

Initiation of Reference Proceedings

According to the Minnesota Juvenile Court Rules, initiation of reference proceedings can be effected by application of the county attorney, by application of the child or by the court's own motion.[3]

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between March, 1969 and August, 1971, but gives no indication of the outcome of these hearings or of what happened to those youths who were certified. Similarly, the recent juvenile court study of the Governor's Commission on Crime Prevention and Control contains information on juveniles for whom reference hearings have been held during selected months in 1975, but neither (1) considers cases for which reference proceedings have been initiated, but no hearing held, or (2) follows cases of certified juveniles past the reference hearing in juvenile court.

[2]See the Introduction, above, for the organization of Minnesota juvenile courts.

[3]Minn. JCR 8-1.

In those counties governed by these rules in which reference has been initiated in the past three years, the more common pattern is one of initiation by the county attorney, although in two counties the court routinely initiated reference proceedings on its own motion.[4] In Hennepin County, where the study of certification records covered the past two calendar years, all reference proceedings are initiated by the county attorney, although the court rules provide for application by other "appropriate persons."

In counties where the court initiates, the procedure often is to indicate on the petition and notice that a combined reference/adjudicatory hearing will be held.[5] In many counties where the county attorney applies for reference, such application takes place at the adjudicatory/reference hearing itself, and a written motion is not submitted. Even when the motion is written, it often lacks a clear statement of the reasons for and facts in support of reference.[6]

In deciding to apply for reference in a particular case, county attorneys consult most frequently with law enforcement officials and probation officers, and both prosecutors and the court rely most heavily on information concerning past court record and prior court contacts. In Hennepin County, where (in contradistinction to the other counties studied) motions are made primarily on violent offenses, the factors considered by the prosecutor in deciding to apply for reference are (1) sufficiency of evidence, (2) past record, (3) past treatment exposure and (4) probation and parole recommendation.

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[4] In terms of absolute numbers, however, 74 of the 134 cases examined were initiated by the county attorney, 54 by the court and 2 by the child. Since 58 of the 74 county attorney-initiated cases occurred in Hennepin County, the majority of cases out-state were initiated by the court even though the majority of counties studied used county attorney initiation.

[5] This practice is authorized by Minn. JCR 4-2(6).

[6] In contradiction of Minn. JCR 8-1(2). A recurrent point of controversy among interviewed judges and county attorneys concerns the binding nature of the Minnesota Juvenile Court Rules. Many of these decision-makers feel that the rules are only advisory.

Although in county courts the judge has the option of deciding whether or not a reference hearing will be held after the county attorney submits a motion for reference,[7] this option is rarely exercised--i.e., if a motion for reference is made, the reference hearing automatically will be held. This may be partly due to the fact that, as noted above, the motion often is made at the hearing--a procedure which seems to be indicative in some counties of an informal agreement between the judge and the county attorney that reference should be considered.

Although most consulted judges and county attorneys expressed satisfaction with current procedures for initiation of reference, possible changes suggested include:

1. the need for uniform rules throughout the state;
2. more emphasis on the juvenile's right to request certification in situations where adult dispositions might be considered less severe than or preferable to those available to the juvenile court; and
3. either making reference "automatic" in the case of certain serious crimes when the juvenile is at least 16 years old or giving the county attorney discretion to make referral decisions in these cases.

These suggestions are closely tied to themes recurrent in the course of this study and will be discussed at greater length below.

Sequence of Hearings

As noted above, several counties combine the reference and adjudicatory hearings. I.e., if at the hearing a decision is made not to refer the juvenile for adult prosecution, juvenile adjudicatory proceedings are held immediately afterwards. Additionally, some courts routinely hold the dispositional hearing immediately after adjudication, which means that the reference, adjudication and disposition decisions all may be made during one court appearance, even though the three proceedings are considered separate and distinct. Another "combination" of hearings utilized in a few instances is that of holding the adult hearing (both arraignment and disposition) as soon as a positive reference decision is made.

In Hennepin County the various juvenile court proceedings--

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[7] Minn. JCR 8-1 (3).

arraignment, trial and disposition--almost always involve different court appearances. Hennepin County is also the only one of the sample counties to hold probable cause hearings prior to reference hearings. The probable cause hearing, which is required by the Hennepin Juvenile Court Rules 5.21, may be held concomitantly with the reference hearing, but only "in a bifurcated manner."

Reference Hearing: Information and Criteria

A large majority of judges and county attorneys responding to the questionnaires indicated that they had school records, social studies, prior court record and information concerning the alleged offense available to them over 75% of the time at the reference hearing. Psychological profiles were available in a much smaller percentage of cases, a situation seen by the decision-makers as attributable to the fact that the child's cooperation or permission is necessary to obtain psychological information. In a number of counties respondents said that it was more difficult to obtain information on juveniles without prior court contact, but this apparently has less to do with perceived legal constraints (e.g., in ordering social studies on youths who have not admitted or been found guilty of the alleged offenses) than with certain practical difficulties.[8] These practical difficulties include the "additional searching" necessary, the lack of probation observations and histories, etc. Many decision-makers found these difficulties to be of minimal importance since first-time offenders are rarely, if ever, considered for certification in their counties.

In responding to a question which asked them to indicate which of the following factors--nature of the alleged offense, past record, public safety, amenability to treatment of availability of appropriate treatment programs/facilities--is most important in their decision to refer or not to refer, the majority of judges named amenability to treatment as the

[8]One interpretation of Minnesota Juvenile Court Rules holds that a social study, in the sense of personal and family information other than that regarding past court record and the current offense, can not be ordered on a juvenile until allegations contained in the petition have been admitted or sustained. Since the reference hearing must be held before the adjudication, this interpretation would prohibit social studies on first-time offenders. [See Minn. JCR 10-1 and 10-4(1).]

single most important consideration. The availability of appropriate programs and facilities was, in general, the next most important factor, although the nature of the offense, past record and consideration of public safety were not far behind.

Clarifications of what specific indicators are used to suggest suitability to treatment focused on responsiveness to past treatment and rehabilitation attempts, as shown by delinquency patterns of increased or decreased seriousness and reports by various youth workers, primarily probation officers and behavioral scientists. Factors held to be important in considering the nature of the current offense include physical harm to persons, the "deliberateness" or "willfulness" of the offense and demonstration of "chronic independence from community standards" or "willful disregard of ordinary standards of conduct." Explication of factors held to be important in assessing past record generally centered around number and repetitiousness of offenses and response to past treatment attempts.

Another important factor in reference decisions which appeared frequently in interviews and in examination of court records is that of age. Essentially, consideration of the juvenile's age appeared to lead to certification in cases where, if the youth had not been nearing 18, reference would not have occurred. Other factors, such as nature of the offense, past record, etc., tended to be outweighed in these cases. The primary justifications for this approach are that: (1) juveniles tend to be released from state juvenile institutions at or shortly after age 18 and when they are close to that age there is not enough time to effect rehabilitation at such institutions; and (2) a youth within a few months of 18 deserves to be treated as an adult, especially when he may feel it to be to his advantage. Closely related to the latter justification is the position, also voiced frequently in regard to certification decisions, that a juvenile disposition for a misdemeanor offense may be inappropriate or too severe when compared to the possible adult dispositions of a fine or a short-term jail sentence. These sentiments are supported by the pattern of offenses and dispositions involved in cases of certified juveniles in many outstate counties --a pattern which differs drastically from that of Hennepin County.

Description of Juveniles and Cases Involved in the Reference Process

In the ten counties included in the study there were a total of 134 cases in which reference proceedings were initiated during the three year period from January, 1973 to December, 1975.[9] The distribution of cases in the various counties is shown in Table 9.

TABLE 9

NUMBER OF CASES CONSIDERED FOR CERTIFICATION

County (1970 Population)		Number of Cases	Percent of Total Cases in Study
Pope	(11,107)	0	0.0%
Pennington	(13,266)	25	18.7
Sherburne	(18,344)	3	2.2
Nobles	(23,208)	5	3.7
Beltrami	(26,373)	15	11.2
Otter Tail	(46,097)	17	12.7
Olmsted	(84,104)	3	2.2
Dakota	(139,808)	3	2.2
St. Louis	(220,693)	5	3.7
Hennepin	(960,080)	58	43.3
Total		134	99.9%

Although a number of different groupings of the counties by size were considered, the most significant distinction among them (in terms of the certification process) appears to be the division between Hennepin County and the outstate counties.[10] For this reason, the descriptive characteristics of juveniles and cases involved in the reference process are tabulated separately for Hennepin and for the outstate counties as well as for all counties combined. The basic characteristics described include: (1) demographic characteristics of juveniles considered for reference; (2) characteristics of the offenses on which consideration for reference was based; (3) prior juvenile court records of the juveniles; and (4) various "outcomes" of the cases considered.

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[9] As noted above, the period covered in Hennepin County is the two years of 1974-75. This should be kept in mind in reading the tables contained in this section which rely on certification records data.

[10] Dakota County is for purposes of the present analysis grouped with the outstate counties even though it is part of the 5-County Metropolitan area surrounding Minneapolis and St. Paul.

Demographic Characteristics

The racial background of the juveniles in the 134 cases considered for adult certification is given in Table 10. As is readily apparent, the race of the juvenile was not ascertainable from juvenile court records in over 63% of cases in counties other than Hennepin. Hennepin County was the only county with any black juveniles and these juveniles were found in a proportion of cases much higher than the proportion of blacks in the total county population (see Table 5, p. 45 above). Furthermore, while the report of the Governor's Commission on Crime Prevention and Control indicates that 15.1% of the offenses referred to Hennepin Juvenile Court in 1975 were committed by black youths, almost three times that percentage (44.8) of the cases considered for certification in Hennepin County in 1975-75 involved black juveniles.

TABLE 10

RACE OF JUVENILES CONSIDERED FOR CERTIFICATION

Race	Hennepin	Outstate	Total Sample
White	23 (39.7%)	23 (30.3%)	46 (34.3%)
Black	26 (44.8)	0 (.0)	26 (19.4)
Native American	6 (10.3)	5 (6.6)	11 (8.2)
Not Ascertainable	3 (5.2)	48 (63.2)	51 (38.1)
Total	58 (100.0%)	76 (100.1%)	134 (100.0%)

Table 11 shows the sex of juveniles considered for certification. Overall, 91.8% of these juveniles were male. This is higher than the 77.7% of statewide court referrals in 1975 which involved males.[11]

TABLE 11

SEX OF JUVENILES CONSIDERED FOR CERTIFICATION

Sex	Hennepin	Outstate	Total Sample
Male	56 (96.6%)	67 (88.2%)	123 (91.8%)
Female	2 (3.4)	9 (11.8)	11 (8.2)
Total	58 (100.0%)	76 (100.0%)	134 (100.0%)

As shown by Table 12, over 70% of the juveniles in the total sample of cases were age 17 or 18 at both the time of petition and the time of the reference hearing. This is in striking contrast to the overall distribution of age at referral to juvenile court reported by the Governor's

[11] Governor's Commission on Crime Prevention and Control data.

Commission on Crime Prevention and Control. Their data indicates that in 1975 only 15.3% of juveniles referred to Hennepin Juvenile Court were 17 and .9% were 18. In the five outstate counties included in their study,[12] 19.2% of the juveniles referred were 17 and only .4% were 18. Another notable distinction brought out by Table 12 is the higher percentage of juveniles age 17 and 18 involved in reference proceedings in the outstate counties as compared to Hennepin County. This is consistent with the differential use of the certification process in Hennepin and the other counties reflected in Tables 12-15.

TABLE 12

AGE OF JUVENILES AT TIME OF REFERENCE PETITION AND AT REFERENCE HEARING

Time of Reference Petition			
Age	Hennepin	Outstate	Total Sample
14	6 (10.3%)	2 (2.7%)	8 (6.1%)
15	9 (15.5)	0 (.0)	9 (6.8)
16	13 (22.4)	7 (9.5)	20 (15.2)
17	26 (44.8)	55 (74.3)	81 (61.4)
18	4 (6.9)	10 (13.5)	14 (10.6)
19	0 (.0)	0 (.0)	0 (.0)
Total	58 (99.9%)	74 (100.0%)	132 (100.1%)

Time of Reference Hearing			
Age	Hennepin	Outstate	Total Sample
14	1 (2.1%)	2 (2.9%)	3 (2.6%)
15	12 (25.5)	0 (.0)	12 (10.3)
16	10 (21.3)	5 (7.1)	15 (12.8)
17	17 (36.2)	41 (58.6)	58 (49.6)
18	6 (12.8)	22 (31.4)	28 (23.9)
19	1 (2.1)	0 (.0)	1 (.9)
Total	47 (100.0%)	70 (100.0%)	117 (100.0%)

Current Offenses

In over 81% of the cases for which reference proceedings were initiated only one juvenile court petition was involved in the consideration for certification. The likelihood that more than one petition was involved was higher in Hennepin County (28% of the cases) than in the other counties (12%). The total number of current offenses in each case for

[12] Olmsted, Nobles, Douglas, Pennington and St. Louis

which reference was considered was, overall, four or less in 90% of the cases. Considerably more of the cases in Hennepin County were concerned with multiple offenses; there, only 32.8% of the cases involved only one offense, as compared with 73.7% outstate. Furthermore, 100% of the outstate cases consisted of four or less offenses while 25% of the Hennepin County cases involved five or more.

In sum, for the 134 cases included in the sample, there were a total of 167 separate current court petitions and 325 current offenses. The breakdown of these offenses is shown in Table 13. The average (mean) number of offenses per case was 2.4 overall, 2.8 for Hennepin County and 1.4 for the other counties. As can be seen from the table, an attempt has been made to group the offenses in categories of decreasing "seriousness." Table 13, as well as Tables 14 and 15, show that more of the total alleged offenses and more of the "most serious" offenses involved in each case fall in the first two categories of offenses for Hennepin County. The other counties tend to have a higher percentage of offenses in the less serious categories. Thus, for example, referring to Table 14 (page 71), 69% of all alleged offenses in Hennepin County fall in categories 1 and 2, while 68% of all alleged offenses in the other counties are in categories 3, 4 and 5. As with the age data presented earlier, this pattern is consistent with justifications for the use of certification offered by decision makers in the respective counties.

TABLE 13

TOTAL OFFENSES ALLEGED (AT TIME OF PETITION)
IN CASES CONSIDERED FOR CERTIFICATION

		Number of Times Alleged		
	Offense	Hennepin	Outstate	Total Sample
Crimes Against Persons: I	Homicide	8	0	8
	Rape	7	0	7
	Aggravated Assault	23	2	25
	Aggravated Robbery	23	3	26
	Aggravated Arson	0	0	0
Crimes Against Persons: II	Other Sex Offenses	8	1	9
	Assault	13	1	14
	Disorderly Conduct	0	5	5
	Robbery	7	2	9
	Burglary	61	12	73
Property Crimes: Theft	Theft	7	18	25
	UUMV	8	5	13
	Receiving Stolen Property	9	1	10
	Shoplifting	0	0	0
	Forgery	0	2	2
Property Crimes: Damage	Arson	0	0	0
	Vandalism	3	11	14
	Game Laws	0	4	4
	Tampering	0	1	1
Drug and Alcohol	Drug violations	6	8	14
	Liquor violations	0	22	22
	Other*	36	8	44
Total		219	106	325

*The 44 offenses in the "other" category include 18 instances of escape and 7 weapons offenses, all from Hennepin County. Among the other miscellaneous offenses were 5 "status offenses," also in Hennepin County.

TABLE 14

PERCENTAGE OF TOTAL ALLEGED OFFENSES
IN MAJOR OFFENSE CATEGORIES

Offense Category	Hennepin	Outstate	Total Sample
1. Crimes Against Persons I	28%	5%	20%
2. Crimes Against Persons II	41	20	34
3. Property Crimes: Theft	11	25	15
4. Property Crimes: Damage	1	15	6
5. Drug and Alcohol Violations	3	28	11
Other	16	8	14
Total	100%	101%	100%
	N=219	N=106	N=325

TABLE 15

PERCENTAGE OF MOST SERIOUS OFFENSES*
IN MAJOR OFFENSE CATEGORIES

Offense Category	Hennepin	Outstate	Total Sample
1. Crimes Against Persons I	59%	7%	29%
2. Crimes Against Persons II	12	13	13
3. Property Crimes: Theft	28	29	28
4. Property Crimes: Damage	0	13	8
5. Drug and Alcohol Violations	0	32	18
Other	2	7	5
Total	101%	101%	101%
	N=58	N=76	N=134

*For each case considered, the "most serious" offense was determined by picking the alleged offense on the reference petition(s) with the lowest number (1-5) of offense category rating.

Prior Juvenile Court Record

Tables 16 and 17 present information regarding the number of prior juvenile court petitions[13] and the time span of the juvenile court record for juveniles considered for certification. A distinction is once again evident between Hennepin and the other counties in both these respects. While 66% of the juveniles in the outstate counties had two or less prior petitions, 69% of the Hennepin County juveniles had three or more. Similarly, while 70% of the outstate juveniles had records spanning less than three years, only 38% of the Hennepin youths were in this category. (It should be recognized that the completeness of court records in noting prior juveniles petitions may vary from county to county. Furthermore, even an accurate counting of prior petitions indicate nothing about the seriousness of the offenses involved or the dispositions received.)

[13]These petitions were usually limited to those filed in the county in which reference was being considered. In some cases, however, petitions from other jurisdictions were included or mentioned in the court records and were then included in the count.

TABLE 16

PRIOR JUVENILE COURT PETITIONS OF JUVENILES CONSIDERED FOR CERTIFICATION

Number of Prior Petitions	Hennepin	Outstate	Total Sample
0	4 (6.9%)	22 (28.9%)	26 (19.4%)
1	4 (6.9)	17 (22.4)	21 (15.7)
2	3 (5.2)	11 (14.5)	14 (10.4)
3	5 (8.6)	9 (11.8)	14 (10.4)
4	3 (5.2)	4 (5.3)	7 (5.2)
5 or more	32 (55.2)	9 (11.8)	41 (30.6)
Unknown	7 (12.1)	4 (5.3)	11 (8.2)
Total	58 (100.1%)	76 (100.0%)	134 (99.9%)

TABLE 17

TIME SPAN* OF JUVENILE COURT RECORD OF JUVENILES CONSIDERED FOR CERTIFICATION

Time Span of Juvenile Record	Hennepin	Outstate	Total Sample
No record	4 (6.9%)	22 (28.9%)	26 (19.4%)
One year or less	7 (12.1)	8 (10.5)	15 (11.2)
13 months-2 years	7 (12.1)	11 (14.5)	18 (13.4)
25 months-3 years	4 (6.9)	12 (15.8)	16 (11.9)
37 months-4 years	16 (27.6)	11 (14.5)	27 (20.1)
Over 4 years	14 (24.1)	8 (10.5)	22 (16.4)
Unknown	6 (10.3)	4 (5.3)	10 (7.5)
Total	58 (100.0%)	76 (100.0%)	134 (99.9%)

*From time of the first juvenile court petition to time of the petition on which reference initiation was based.

Reference Outcomes

As shown by Tables 18, 19 and 20, once reference proceedings were initiated, a reference hearing was held in 119 (88.8%) of the total 134 cases studied, and of these 119 cases where a reference hearing was held, 78 or 65.5% of the juveniles were actually referred for adult prosecution. (In terms of the total sample, then, 58.2% of the cases for which proceedings were initiated ended up being referred.)

TABLE 18

REFERENCE HEARINGS HELD WHEN
REFERENCE PROCEEDINGS INITIATED

Reference Hearing	Hennepin	Outstate	Total Sample
Held	47 (81.0%)	72 (94.7%)	119 (88.8%)
Not Held	11 (19.0)	2 (2.6)	13 (9.7)
Unknown/Case Pending	0 (.0)	2 (2.6)	2 (1.5)
Total	58 (100.0%)	76 (99.9%)	134 (100.0%)

TABLE 19

OUTCOME OF REFERENCE HEARINGS

Hearing Outcome	Hennepin	Outstate	Total Sample
Referred	16 (34.0%)	62 (86.1%)	78 (65.5%)
Not Referred	31 (66.0)	10 (13.9)	41 (34.5)
Total	47 (100.0%)	72 (100.0%)	119 (100.0%)

TABLE 20

ADULT HANDLING OF CASES REFERRED

Adult Handling	Hennepin	Outstate	Total Sample
Returned juvenile court	0 (.0%)	2 (3.2%)	2 (2.6%)
No prosecution/dismissed	0 (.0)	9 (14.5)	9 (11.5)
Convicted/guilty plea	11 (68.8)	40 (64.5)	51 (65.4)
Sent different county	0 (.0)	5 (9.1)	5 (6.4)
Not ascertainable/Pending	5 (31.3)	6 (9.7)	11 (14.1)
Total	16 (100.1%)	62 (101.0%)	78 (100.0%)

As indicated in Table 19, the chance of being referred when the reference hearing was held was higher (86.1% of the cases) in the other nine counties than in Hennepin County (34% of the cases). Once referred for adult prosecution, however, the occurrence of guilty pleas or convictions was slightly higher for Hennepin County, and dispositions once convicted or plead guilty tended to be more severe, as shown by Table 21.

TABLE 21

DISPOSITION OF THOSE CONVICTED OR PLEAD GUILTY

Disposition	Hennepin	Outstate	Total Sample
Fine	0 (.0%)	18 (45.0%)	18 (35.3%)
90 days or less jail	0 (.0)	4 (10.0)	4 (7.8)
More than 90 days jail	5 (45.5)	1 (2.5)	6 (11.8)
Released on bond or OR	2 (18.2)	0 (.0)	2 (3.9)
Probation	1 (9.1)	8 (20.0)	9 (17.6)
Institutionalization (SRM)	3 (27.3)	3 (7.5)	6 (11.8)
Not ascertainable	0 (.0)	6 (15.0)	6 (11.8)
Total	11 (100.1%)	40 (100.0%)	51 (100.0%)

In Hennepin County 73% of those who were convicted or plead guilty received either a sentence of more than 90 days in the jail or workhouse or were sent to the State Reformatory for Men at St. Cloud. In contrast, in the other counties, 58% of those who were convicted or plead guilty received either a fine or less than 90 days in jail (usually only 3-5 days). This reflects the different type of juveniles and offenses for which certification is utilized in the non-metropolitan areas. Even in Hennepin County, however, only three juveniles of the 134 for whom reference proceedings were initiated in two years finally ended up at the State Reformatory for Men in St. Cloud. Of these three, two were within six months of their 18th birthdays at the time of the reference hearing.

Reaction of Judges and County Attorneys to Selected Certification Issues

In addition to descriptions of the use of reference proceedings in their respective counties, judges and county attorneys were asked their opinions on specified issues currently surrounding the reference of juveniles for adult prosecution. These opinions are summarized briefly below.

Statutory Requirements for the Initiation of Reference Proceedings

Questions concerning the statutory requirements for the initiation of reference proceedings touched on four major issues:

1. Should the minimum age for certification be raised?

2. Should first-time offenders be categorically excluded from consideration for adult reference?

3. Should there be an "automatic" referral for certain types of offenders?

4. Should juveniles be allowed to request certification?

Although respondents in several counties indicated that certification is rarely used for juveniles under the age of 16, almost all decision-makers consulted felt that certification should be retained as an option for 14-16 year olds. This position was based on the feeling that 14 and 15 year olds can be extremely sophisticated and dangerous and that there are some juveniles in this age category who cannot benefit from presently available juvenile treatment programs and facilities.

Similar reasoning was exhibited in regard to possible exclusion of first-time offenders. It was felt that first offenders may commit crimes as vicious and serious as those of repeated offenders. The age of the youth and the appropriateness of available juvenile dispositions also were seen as factors which might lead to the certification of first offenders.

The possibility of automatic referrals for juveniles charged with particular offenses was rejected almost unanimously by the judges. It was felt that the mere legal definition of a crime could not provide a sufficient standard for determining the desirability of adult proceedings in any particular case--"there are as many variations in offenses as in the people who commit them." Furthermore, such automatic referral would limit "the trained discretion of an impartial judge", would ignore possible rehabilitation within the juvenile system and would contradict the goal of the juvenile court to "work with children, not the offense they have been charged for (and may be innocent of)." County attorneys, however, were divided almost evenly on this question. Those in favor of automatically removing certain juveniles from juvenile court jurisdiction emphasized the inability of the juvenile system to deal with youths who have committed violent crimes against persons. Two respondents suggested consideration of the "Colorado Plan" which in cases of certain types of first offenses and certain types of second offenses lowers the age of majority from 18 to 16.

The majority of respondents felt that juveniles should retain the right to request certification. Some supported this position by

maintaining that the juvenile might feel he could obtain better treatment in adult proceedings--"adult procedures [may] afford him greater advantages which outweigh the risks of sentencing as an adult," and "adult punishment [may be] less severe than juvenile 'treatment.'" Others held that although the juvenile should be able to request certification, if he makes this request, he should be required to demonstrate that he meets the "not suitable to treatment" and "public safety" criteria. The Commission subsequently specifically rejected the latter suggestion.

Adequacy of Statutory Standards for Certification

Respondents in both groups were fairly evenly divided on the question of whether the statutory requirements for certification--"not suitable for treatment" and "public safety is not served"--are so vague as to be meaningless. Those who said the criteria were too vague felt that uniform interpretation of either phrase was impossible, promoting arbitrariness in reference decisions. Those supporting the existing criteria emphasized the "fluidity" and judicial discretion which they allow.

Responses were also divided as to whether certification based upon the inability of available juvenile facilities/programs to provide the needed treatment is an abridgement of due process. More judges felt that it is the State's responsibility to provide needed treatment programs. A qualification to this position offered by one respondent is that "if the facilities could [help] but didn't, that is a denial of due process; if they couldn't help, that is not." This position would suggest that the State is obligated to provide treatment only (1) when it is known what would constitute treatment in a particular case and (2) when the potential for providing the defined treatment exists. Those who felt that due process was not being abridged by basing certification decisions on availability of appropriate treatment programs stressed that existing programs cannot be expected to handle every case, that society cannot have a separate program for every individual and that all that can be expected is the provision of a "reasonable selection of alternative treatment facilities/programs."

General Evaluation of the Certification Process

The majority response to a question asking if certification could be construed as the loss of a right to treatment guaranteed by the

juvenile court was "no." Reasons supporting this response were varied, but many stressed that juveniles unable to be treated within the existing juvenile system were not losing a right by being removed from it and that adult programs may offer better chances of rehabilitation to some juvenile offenders. Several respondents added that it is inappropriate to see treatment and punishment as totally contrasting concepts and that a more "balanced approach" would allow better treatment in the sense of "improving" the offender, whether such improvement occurs within the juvenile or the adult system. In a related question all but one respondent rejected the idea that certification could be construed as "cruel and unusual punishment."

CHAPTER IV

RIGHT TO TREATMENT

It is the position of the Commission that juveniles brought under the jurisdiction of the juvenile court have a constitutional right to treatment. The rationale for this position is set forth in a background document prepared for the Commission by one of its members, Professor Maynard E. Pirsig. This material is reproduced in its entirety in the appendix to this report.

Given that juveniles have a right to treatment, the Commission directed its effort toward examining the implementation of this concept in practice in the sample counties. The central questions guiding its approach were whether decision-makers in the juvenile court process accepted a treatment rationale as the basis of parens patriae powers in the court and, if so, how they defined "treatment" and how they implemented the treatment of youth within the jurisdiction of their court. To the extent that the courts followed a treatment rationale, the study sought to discover what decision-makers believed to be the limitations, both legal and practical, on treatment.

This chapter first summarizes current law on the issue of right to treatment. Following that summary, the report presents the findings of the study and discusses possible ramifications of the findings in light of current law. Many of the legal issues involved in this discussion have been raised too recently to have been fully disposed of through litigation. The examination of these issues thus focuses in large part upon the attitudes and opinions of the respondents.

Summary Legal Analysis: The Right to Treatment

Although the United States Supreme Court has not yet fully addressed the right to treatment issue within the framework of the juvenile court, the current trend in federal decisions indicates that where courts exercise parens patriae powers over juveniles within their jurisdiction the juveniles have a constitutional right to treatment.

Statutory Right to Treatment in Minnesota

In re Welfare of J.E.C. v. State[1] confirmed the statutory right in Minnesota. The Supreme Court held that a child committed to the custody of the Commissioner of Corrections is entitled to a program of rehabilitative treatment designed to meet his needs. In reaching its decision, the Court relied on statutes granting the Commissioner authority and responsibility for youth corrections. Among the issues addressed were the parameters of the right, i.e., how far the Commissioner must go in treating the individual needs of a juvenile committed to his authority. The case was remanded to the lower court with instructions to determine whether an effective rehabilitative treatment program was "feasible and possible" within the juvenile justice system. The Court thus adopted a reasonableness standard as the limit on the juvenile's right.

An issue not raised by J.E.C. is whether juveniles not committed to the Commissioner of Corrections but remaining under the authority of the juvenile court also have a right to treatment. The authority of the juvenile courts arises under a different statute than that of the Commissioner. The stated purpose of the courts is to provide "the care and guidance . . . as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interest of the state."[2] Some question may be raised whether "care and guidance" requires a program of treatment, but read in conjunction with the statutory provision for dispositions, the purpose of the courts is clearly not punitive. It would seem that care and guidance for the juvenile's welfare would require treatment where treatment is needed. An interesting question may be raised as to the role of the juvenile courts where the juvenile is not in need of rehabilitative treatment. That issue will be addressed later.

Constitutional Protection of the Right to Treatment

If the right to treatment were based solely on statute, the state could shape, alter, qualify or eliminate that right by amending the statute. There are, of course, constitutional limits on the power of the state and these apply to the juvenile courts. The constitutional

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[1] ___Minn.___, 225 N. W. 2d. 245 (1975).

[2] Minn. Stat. Sec. 260.011 Subd. 2.

protections accorded to citizens limit the power of the state to intervene in the lives of juveniles as well as adults. Thus the nature and extent of the constitutional protections must be considered before recommending a possible change in the juvenile code, in order that the statute may provide the necessary constitutional safeguards.

The federal cases again have involved only the rights of institutionalized juveniles, but the reasoning strongly indicates that there is a right to treatment for non-institutionalized juveniles within the jurisdiction of the juvenile court. The cases have relied on one or more of three constitutional theories: (1) the Eighth Amendment prohibition against cruel and unusual punishment; (2) the Fourteenth Amendment right to due process of law; or (3) the Fourteenth Amendment right to equal protection of the law.

Cruel and Unusual Punishment

The cruel and unusual punishment theory is perhaps the most straightforward of the three theories. Cases have held failure to provide treatment to institutionalized juveniles to be cruel and unusual punishment of the juveniles. Mere physical control of juveniles deprives them of fulfillment of their emotional needs and of the training and direction needed to prepare young minds for adulthood. The cases have thus found cruel and unusual punishment where beatings and drugs were indiscriminately used to control behavior,[3] where juveniles were held in solitary confinement for extended periods of time,[4] and where the institution failed to provide rehabilitative programs[5] including educational programs and adequate psychiatric care.[6] It has been suggested that the threshold of cruel and unusual punishment is much lower for juveniles than for adults due to the

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[3] Morales v. Turman, 364 F. Supp. 166 (E.D. Tex. 1973), Nelson v. Heyne, 355 F. Supp. 451 (N.D. Ind. 1972), aff'd 491 F. 2d. 352 (7th Cir. 1974), cert. den. 94 S.Ct. 3183 (1974).

[4] Lollis v. New York State Dept. of Social Services, 322 F. Supp. 473 (S.D.N.Y. 1970).

[5] Baker V. Hamilton, 345 F. Supp. 345 (W.D. Ky. 1972).

[6] Morales v. Turman, supra.

special needs of the young.[7] Thus, for example, a short period of solitary confinement might be cruel and unusual punishment of a juvenile while a more extended period might not violate the rights of an adult.

Obviously the protection from cruel and unusual punishment extends to persons not confined to institutions. The protection, however, would seem to have less applicability as the extent of the control exercised by the state diminishes. For purposes of contrasting statutory rights with constitutional protection, it may be assumed that the Eighth Amendment will not permit statutory dispositons which subject juveniles to undue mental stress. The issue, though, is more likely to arise in an individual case than as a matter of statutory requirements. Thus a statute could not authorize extended periods of solitary confinement or incarceration without some access to treatment programs, but a cruel and unusual punishment issue is likely to arise outside the institutional setting only where the juvenile can show a special need which has been ignored by the disposition of the court.

Due Process

The Fourteenth Amendment prohibits deprivation of life, liberty, or property without due process of law. Because the juvenile court procedures do not grant juveniles the full panoply of procedural protections required in the criminal courts, the deprivation of liberty ordered in a disposition violates the juvenile's due process rights. This violation of the juvenile's rights has been held to be constitutionally permissible if the state compensates for the loss of rights by providing necessary rehabilitative treatment as a quid pro quo.[8] The protection has been held to apply to juveniles held in detention pending adjudication as well as to adjudicated delinquents.[9]

Due process protection is not limited to persons held in institutions but extends to every phase of the court process. Thus, for

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[7]Wald and Schwartz, "Trying a Juvenile Right to Treatment Suit: Pointers and Pitfalls for Plaintiffs", 12 Am. Cr. L. Rev. 125 (1974).

[8]Nelson v. Heyne, supra, at 360.

[9]Martarella v. Kelley, 349 F. Supp. 575, 603 (S.D.N.Y. 1972)

example, a juvenile held in detention for an extended period of time is entitled to treatment under the due process requirements.[10] No interference with a person's civil rights is permitted absent due process of law. For example, a common condition of probation is the restriction on travel, denying the probationer the right to leave the county or state without first obtaining the permission of a probation officer. Although loss of the right to travel does not impose a substantial hardship on a given juvenile, this condition could well be held constitutionally invalid because it is the result of a court order entered without affording the juvenile full procedural safeguards.

The due process issue could be eliminated by requiring the full panoply of due process rights in the juvenile courts. The U. S. Supreme Court has mandated many of the basic rights in its decisions of the last decade.[11] The most notable exception is the decision in McKeiver v. Pennsylvania, 403 U.S. 528 (1971), in which the Court held juveniles are not entitled to trial by jury. The Court found that "fundamental fairness" concepts did not require trial by jury in the juvenile courts, although there was some indication the Court intended to preserve the treatment nature of the juvenile courts by so holding. If the state desires to turn from treatment, the right to trial by jury may well be constitutionally protected in such juvenile proceedings. The full panoply of rights would require that juvenile delinquency matters be conducted in accordance with the Minnesota Rules of Criminal Procedure. Special protections, e.g., confidentiality of records, could be retained and the actions could remain in juvenile courts. Further, treatment oriented dispositions could be retained within the limits of the equal protection doctrine (to be discussed in more detail below). The primary objection to such a procedural shift would seem to be that voiced by Justice Blackmun in the McKeiver opinion, that the increased formality of these rules would hamper the juvenile court system. The original intent of the juvenile system was to provide an informal setting which

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[10] ibid.

[11] See Appendix A (Pirsig Presentation).

would promote fact finding and discovery of the causes of delinquency in individual cases in order that those causes could be treated effectively. The recent trend of opinions granting juveniles greater procedural rights serves as an indication of the alleged failure of the juvenile court process to result in effective treatment.

Equal Protection

The third and final theory on which a constitutional right to treatment may be based is the equal protection guarantee of the Fourteenth Amendment. There appear to be no cases to date relying on this theory to support a right to treatment for juveniles. However, the theory has been frequently used in mental health cases[12] and would seem to follow through to the juvenile courts. The theory is essentially the same quid pro quo formula as that applied in due process cases, except that the quid pro quo is not for the lack of process, but rather for the potentially more severe dispositions that may arise from the juvenile courts as opposed to the penalties available under the criminal law. For example, an adult found guilty of a misdemeanor faces a maximum penalty of ninety days in jail and a three hundred dollar fine. A juvenile committing the same offense could be placed on probation until he reached age twenty-one or even institutionalized for an indeterminate period up to his twenty-first birthday.

The juvenile code also permits proceedings where the juvenile is accused of acts which would not be offenses if committed by adults. Mental health cases, which also permit confinement of persons who have not been found guilty of criminal offenses, have held that treatment must be provided as the quid pro quo for incarceration under these circumstances. If this rationale applies to juvenile proceedings--and there seems no reason why it should not--it would apply not only to institutionalized juveniles but also to any juvenile subject to the ongoing supervision of the juvenile court.

Summary of the Current Law on Right to Treatment

In sum, juveniles within the jurisdiction of the juvenile courts in Minnesota have a legal right to treatment arising under the Minnesota

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[12] Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971)

Statutes and protected by the Constitution. There is some question whether the statutory provision for "care and guidance" offers the juvenile the same rights as the constitutional requirement of "treatment." However, juveniles are protected to the extent of the constitutional requirements, though these may be greater than those of the statute. Although there appear to be no cases to date finding non-institutionalized juveniles to have a right to treatment, the rationale of the current right to treatment decisions seems to include these juveniles as well. It may be argued, however, that because of the lesser intrusion into the lives of non-institutionalized juveniles they are entitled to less constitutional protection, i.e., a less substantial quid pro quo.

The right to treatment extends to juveniles on probation and in foster homes as well as to those in institutions. It is an open question whether the conditions of probation alone, or the removal from an inadequate home situation standing by itself, fulfill the legal requirements of treatment. No doubt in some situations these are adequate to meet the juvenile's needs. The distinction between "care and guidance" and "treatment" may be important here. Probation and foster home placements almost certainly provide "care and guidance"--care to the extent of shelter, guidance at least to the extent of express restrictions on undesirable behavior. But it is an open question whether shelter and restrictions on behavior can be considered "treatment." These clearly are not adequate to satisfy the juvenile's right in an institutional setting.[13]

In terms of juvenile court procedure, several difficult legal issues have not been raised in the cases decided to date which should be addressed. Most importantly, the extent of the right is unknown, i.e., is it an absolute right or may the juvenile court or the Commissioner of Corrections under some circumstances adopt a disposition which does not provide needed treatment? The remainder of this chapter will presume that the right is absolute and that courts thus are prohibited from entering a dispositional order which will not offer needed treatment to the

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[13] Nelson v. Heyne, supra.

juvenile. What, then, under such presumption, is the proper role of the court when confronted with a juvenile who is not in need of treatment? Is it proper for the state to presume a need for treatment and place the burden on the juvenile to rebut that need? What is the role of the court when a needed treatment is not available? Beyond these procedural issues lie a number of substantive problems. How may the specific needs of a juvenile be determined? Who bears ultimate responsibility for providing needed treatment programs? What is the juvenile's remedy if needed programs are not provided?

Implementation of the Right to Treatment

All of the juvenile court judges responding to the study questionnaires agreed that juveniles have a legal right to treatment although all but three indicated that courts should balance treatment of social and psychological needs with punishment. The study sought to determine how the right to treatment was implemented in the courts by exploring the methods used to determine the juvenile's needs and the dispositions commonly used to respond to those needs.

The responses of the judges indicate all available knowledge of the juvenile and his background are considered in an attempt to determine his needs prior to entering a dispositional order. The questionnaire employed by the Commission suggested a number of different categories of information which might be used by courts, and with few exceptions the courts responded that all were weighed as to relevance and source and then considered in choosing dispositions. The specific means of making the dispositional choice, however, varies considerably--not only according to county but also according to the juvenile and offense in question. In smaller communities the judge's personal knowledge of the juvenile and/or his family sometimes may be more important than evidence of an offense or the school records pertaining to the juvenile, but all three are considered. Social studies are ordered in a variety of circumstances, but primarily when probation does not appear to be an appropriate disposition or when the judge is unfamiliar with the juvenile. Many courts order a study when a serious offense is involved, rarely ordering a study where a lesser offense is alleged. When ordered, the social study usually contains a recommendation for disposition, which all courts indicated is

accepted in most cases. The courts do, however, reserve the right to refuse dispositions proposed by the social study.

The study data suggest that the juvenile court judge ultimately decides what disposition is appropriate, although the decision may be passed to the probation office in many cases. Thus it is the court which bears ultimate liability for error or injustice. Commission research also suggests that courts frequently order dispositions intended to be punitive. If, as the analysis of the law suggests, such dispositions violate the juvenile's civil rights, then it is the court which is liable for damages.[14]

The responses indicate that dispositional hearings are held separately from adjudicatory hearings in a substantial percentage of cases in most counties. However, interview responses indicated that juveniles admitted the allegations in petitions in the large majority of cases, and the separate dispositional hearing in most of these immediately followed the admission. Two of the sample counties indicated that separate hearings were held in less than twenty-five percent of all cases, one in twenty-five to fifty percent of all cases, and two in fifty to seventy-five percent of all cases. Based on interviews and staff observation, the evidence suggests that even where separate hearings are held there frequently is no clear delineation of the adjudicatory and dispositional phases of a delinquency proceeding. This implies that there is generally no clear statement of those facts which should serve as a basis for a dispositional decision. The absence of such a concise statement of specific facts makes it impossible for the juvenile to challenge or contribute to such data. This may mean that he is in effect denied his right to participate in the dispositional hearing.

The study indicated that juveniles rarely seek legal representation before the juvenile court. Several respondents indicated that as many as ninety-five percent of all juveniles admit to the allegations in the petition. At the same time, however, the juvenile interviews revealed that those who had been before the court generally did not understand the process, did not understand whether they had been found

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[14] 42 U.S.C.A. Sec. 1983.

delinquent or were on a continuance, whether they were being punished or "helped," nor the grounds on which the court based its disposition. As Mr. C. Paul Jones, State Public Defender noted in his testimony before the Commission, the most important service the public defender offers many of his juvenile clients is to see them and discuss their side of the problem. Many of the courts observed that an increased role for both county attorneys and defense counsel would be appreciated. In some outstate courts the current practice is to appoint defense counsel only where substantial doubt exists as to whether the juvenile committed the offense or where the offense or likely disposition are serious. Where a desire for an increased role by the public defender was noted, the courts most frequently cited budgetary pressure as the reason for minimizing use of appointed defense counsel. The reality of financial limitations in some counties points to the need to find some added means to provide defense counsel for juveniles. The Commission endorses the proposal that the public defender program be extended to serve needy juveniles appearing in all counties of the state. The public defender program serving the Hennepin County Juvenile Court is cited as a model which is worthy of study.

There is virtually no law on the issue of effectiveness of the proffered treatment. The right to treatment requires as a minimum that the treatment be designed to meet the individual needs of the juvenile in question, but there appears to be no requirement that all the juvenile's needs be addressed or even that the court address as many as are ascertainable. When it is clear that a juvenile has specific needs, there is evidence that the courts included in our survey make a good faith effort to satisfy those needs. The "best interests of the juvenile" is clearly the standard to which most courts address themselves. The extent of the statutory requirement in Minnesota appears to have been set forth in the J.E.C. opinion. The lower court was directed to determine whether a proposed treatment program was "feasible and possible." That language would appear to require all reasonable efforts be made to meet properly the juvenile's needs.

Probation officers were asked to list the five most common dispositions and estimate by percentage the frequency of their use. Including

supervised and unsupervised continuances for dismissal, probation was the most common disposition, varying from seventy to ninety-five percent of all dispositions. The questionnaire distinguished criminal from non-criminal delinquency. Generally less severe dispositions were used in non-criminal proceedings, the most notable difference being a much greater reliance on continuances for dismissal. Foster and group home care were the next most commonly used, followed by commitment to the Commissioner of Corrections. Also cited were the use of regional detention centers, referral to private agencies and specialized treatment programs. Virtually all probation officers cited a need for more foster and group homes for juveniles, with some requesting more structured homes and others requesting less-structured homes. Also cited was the need for chemical dependency programs, programs for juveniles who are almost adults, facilities for the near-retarded, programs for those with learning disabilities, and more court services staff.

Legal Issues in the Right to Treatment

The Commission found that "treatment" under the juvenile system is weakest at its two extremes. A system based on rehabilitative treatment assumes first that its subjects are in need of treatment; secondly, that treatment resources are available; and finally that most subjects will be responsive to the proffered treatment. The authority of the court is least adequate when it confronts a juvenile (a) who is not in need of rehabilitative treatment or (b) for whom an adequate treatment program is not available because of the special nature of his needs. The first issue arises most often in the case of the "minor" offender, one who has committed only one or two offenses or whose offenses are not serious in nature, e.g., misdemeanors. The second issue generally arises in the case of serious offenders who are not responsive to known treatment programs or offenders whose needs are known but for whom no appropriate resource exists.

The problem of handling juveniles who appear to have no treatment needs is a recurring one in the Minnesota courts. There can be no doubt that the issue frequently confronts the courts. Judges in the sample counties differed on the question whether commission of an offense, in and of itself, was sufficient to show a need for treatment. Probation

officers in all but one county, however, agreed that mere commission of an offense did not demonstrate a need for treatment. It is interesting to note that both groups, with only one dissenting probation officer, agreed that punishment can be a form of treatment. Even assuming that punishment may be treatment, the data suggest that many juvenile offenders simply are not in need of court enforced treatment.

Under current law if the juvenile before the court is not in need of treatment, the court has two obvious choices. It may dismiss the petition for lack of jurisdiction or certify the juvenile to trial in the criminal courts.[15] Neither alternative may be particularly desirable in an individual case. If the petition is simply dismissed, the juvenile is shown that he may violate the law and face no sanction. If the juvenile is referred to the criminal courts he may be subject to a harsher penalty than that faced by a more hardened offender who commits the same offense but remains in the juvenile system because of his need for treatment. The issue of the need for treatment arises most often with first offenders, where the court has had no prior contact with the juvenile and has little information, other than the circumstances of the offense, on which to base its disposition. As the number of prior offenses increases, it is less difficult to show a need for rehabilitative treatment, yet the issue remains. A recent New York appellate decision reversed the disposition of a lower court placing a juvenile on probation for two years. The Court found the sentence was based in part on two prior allegations of the same offense as that before it, but that these had never been proven: the first was adjusted at intake, the second dismissed. Further, the juvenile court record showed no correlation between the disposition and the needs of the juvenile. The decision to reverse reflects the requirement of individualized treatment even outside institutions and indicates that dispositions are not permissible unless the

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[15] Minn. Stat. Sec. 260.125. It is not clear that this is a proper case for certification. The section seems to comprehend juveniles for whom the controls of the juvenile system are insufficient, i.e., the "hard-core" delinquent. However, no cases have been decided on the question, and by definition a juvenile who is not in need of treatment is not suitable for treatment. As the certification study indicates, some courts appear to be using this option.

court shows the juvenile has a need for the disposition. As the appellate court stated in its opinion, "dispositional slots" mechanically assigned to categories of offenses or offenders will not be allowed in the juvenile court system.[16]

The jurisdictional issue of need for treatment raises a central theme of the right to treatment issue: whether punishment in and of itself is appropriate in the juvenile courts. The commission of an offense may indicate that a juvenile needs treatment related to disrespect of the law and the law enforcement system. It is argued that the juvenile courts ought not to get involved where the juvenile acts out of the simple inexperience or indiscretion of youth; on the other hand, failure of the court to sanction the youth may encourage future offenses by permitting the youth to believe the offenses are not taken seriously by society. As noted earlier, virtually all respondents in the sample counties agreed that punishment could be a form of treatment if it appeared that punishment would reduce the likelihood of future delinquent acts by the juvenile. Many of the respondents also stated that punishment was a primary motive in the disposition of a small percentage of cases, usually less than twenty-five per cent although in some counties a higher percentage was noted. One respondent suggested that the purpose of treatment is to create a realization that punishment is justified.

The juvenile code limits the dispositions available to the court to certain broad categories including counselling, probation, placement in foster or group homes or commitment to the Commissioner of Corrections. Although the purpose of the statute is to respond to the needs of the juvenile through dispositions which have treatment as their purpose, obviously any of these can be used as "punishment" if the court's purpose is merely to control the juvenile's behavior rather than to respond to his needs. The study indicates this happens frequently in practice. For example, the most common disposition in all sample counties was probation; estimates of the frequency of its use, if one includes continuances to dismiss with supervision, varied from seventy to eighty

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[16] In re W., 358 N.Y.S. 2d 493 (1974).

per cent, and as high as ninety-five per cent of all dispositions if unsupervised continuances are included. Some comments on the questionnaires and in interviews lead to the conclusion that many of these dispositions were ordered either solely for punitive reasons or for lack of knowledge of the juvenile's needs.

Judges also reported using, in unusual cases, a two week incarceration at regional detention centers under the guise of "diagnostic evaluation" if they believed such a period of lockup would be beneficial to the juvenile. Two judges reported the use of a two or three day therapy visit to the juvenile cell of the county jail, again in unusual cases. This use of the dispositions available to the juvenile court does not seem to reflect dissatisfaction with the treatment theory of juvenile justice so much as a strong feeling that in many cases the only "treatment" needed is a disciplinary response by the court. The existence of this difficulty is borne out by the results of the Commission's research. These results show that older juveniles in outstate Minnesota are more likely to be certified on allegations of minor offenses than for serious offenses. Interview responses indicated the courts did not feel the dispositions available to the juvenile courts provided an adequate sanction, while some sanction was the only court action needed. Finally, the results of the study conducted by the Governor's Commission on Crime Prevention and Control indicate that courts frequently do not intervene at all when juveniles repeat after the fifth or sixth offense.

The use of the ninety-day continuance for dismissal provided for in the statute raises some interesting issues. Its primary advantages are that it avoids the need to label a child delinquent and that it is frequently the least restrictive treatment alternative. It should be noted, however, that probation following adjudication can provide the same treatments. Many courts use the continuance and attach conditions to it, such as restitution or participation in a diversion or other treatment program. In effect, the courts are exercising their authority without having to show the need for treatment. Such uses of the continuance for dismissal have never been tested in the Supreme Court. At the same time, however, the primary danger in such use of the continuance for dismissal is its potential for abuse. It allows the court to

intervene and impose restrictions on the juvenile without showing that the juvenile will benefit from its intervention. There are indications that creative interpretations of this authority are used as a basis for entering dispositions not explicitly authorized by statute. It is questionable whether this section of the juvenile code should be so broadly construed.

The data suggest that courts frequently intervene without a clear understanding of the juvenile's treatment needs. Without such understanding and verification of need, the risk of unnecessary court intervention increases substantially. Under these circumstances, intervention may become punishment and violate the juvenile's right to treatment. Court intervention without evidence of need is innappropriate. Although there is a felt need for court intervention into all offenses, i.e., a feeling that the juvenile court should have a law enforcement role complementary to its treatment role which would enable it to handle juveniles not in need of treatment, it is clear that such a role would be in violation of the juvenile's due process rights. It seems apparent that such a disciplinary role could only be constitutional if the juvenile were accorded the full panoply of criminal procedural protections. Regardless of the seriousness of the offense, then, the court is not privileged to intervene unless there is a proven need for court-ordered treatment. It is equally apparent that the use in many courts of probation as a standard disposition for minor offenders violates the rights of those juveniles, unless in each case there is a finding that the probation is responsive to a need of the individual juvenile.

The other extreme of the treatment spectrum concerns juveniles who have treatment needs but for whom no treatment resource is available. The Minnesota Supreme Court has held that the Commissioner of Corrections is to provide any feasible and possible program for juveniles within his jurisdiction. It is a question of degree in each case whether treatment of some juveniles is feasible and possible. It is also unclear whether "feasible and possible" is an adequate guide to the protection of the juvenile's constitutional rights. These rights may well be violated, even in the face of a reasonable effort, if no meaningful treatment is provided.

Considerable public attention has been drawn to a proposal that a small, physically secure facility should be provided for the care of hard-core, potentially dangerous juveniles. One of the questionnaires distributed to probation officers solicited opinions as to such alleged need. Almost without exception, respondents agreed that there was such a need. These replies should be interpreted with some reservation, since some indicated that their agreement was based on the desirability to have such a facility available, should the need for it arise. One respondent specifically stated that while no such need existed in his jurisdiction, he agreed with the proposal because of the need for it in other communities. Only one respondent stated that there was a pressing need in the state for a secure facility for "unsophisticated juveniles who run." Judges were asked to estimate the number of juveniles they would have placed in a secure facility last year if one had been available. With the exception of the Hennepin County court, which estimated fifteen-twenty juveniles at any one time, all the estimates were between zero and three. The criteria which were proposed for use in ordering a juvenile placed in such a facility varied from respondent to respondent, but most agreed it would be used as a last resort and generally limited to violent offenders. Two respondents stated that certification seemed sufficient for their purposes.

The debate over the proposal for a secure facility has been carried on for a considerable period of time. Some prominent leaders in the juvenile justice field and one study commission have advocated such a step. The Department of Corrections has countered with a tentative proposal to establish a special program for such youth but only after certification to and finding of guilt by a criminal court. Major parties to the debate have attempted to reduce to specifics the number of youth they are talking about. All seem to agree that the numbers are small--the tentative proposal by the Department of Corrections projects planning for twenty-six juveniles in its proposal. All agree that predicting violent behavior is more than difficult; careful review of predictive efforts reveals glaring lack of success. Predictive efforts generally assume that violence grows out of case history factors--an assumption which does not fully recognize the tremendous force of the individual's

immediate social situation in either triggering or supporting violent behavior. A prison often experiences violent behavior not only because it houses many impulse-ridden, acting-out men but also because it nurtures a climate and culture which encourages and supports violence.

This is not to say that Minnesota does not need more effective treatment programs for juveniles. With the development of such programs, progressively fewer youth would be or should be subjected to certification even if the process is continued in its present form. Minnesota needs more programs and more institutional resources for delinquents than are presently available. This is not a call for more beds but for a redistribution of present capacities through the development of smaller, more specialized facilities. The job of institutional management is the development, maintenance and use of positive human relationships. Small facilities, involving no more than forty or fifty youth plus staff, do not automatically generate and maintain positive human relationships, but the task of achieving this goal is immeasurably easier than in an institution serving 100, 150, 200 or more youth.

Experience proves that capacity to cope with aggressive, hostile behavior in a child-caring institution varies directly with the quality of life experience provided therein. It is entirely possible that the large majority of youth presently certified, even in Hennepin County, could be handled in open type juvenile facilities provided the programs were sufficiently strong. In addition, other youth would be better served in the process.

Coordination of Efforts

As a final note the Commission observes need for courts and agencies in the juvenile justice field to work toward improved coordination of effort. This is not to suggest that efforts to do so have been lacking, but that added opportunities for cooperation are numerous. For example, there are certain functions which need to be performed which are beyond the reach of most juvenile courts and local probation offices. Many courts utilize physically distant resources, sometimes located in other states. Information is not pooled anywhere within the state as to the extent to which such resources are used for Minnesota juveniles, the

identity of agencies so used or the character or quality of their programs. A large court possessing sufficient staff and travel monies may be able to assemble such data for its own guidance, but smaller courts cannot do so. Some state agency, perhaps the Department of Corrections, should undertake to perform this function in behalf of all juvenile courts and probation offices in Minnesota.

The activities of certain state agencies, most notably the Department of Corrections and the Governor's Commission on Crime Prevention and Control, impact the work and effectiveness of all the juvenile courts and probation departments. Communications between these agencies--state and local, are never sufficient to totally avoid misunderstandings or feelings that there is not adequate opportunity for agencies to make imput into planning which impinges upon their functioning. The Commission has no easy solution to propose for such perennial and chronic problems but wishes to underscore the importance of efforts at state and regional levels to secure and utilize local knowledge and experience.

The role and effectiveness of joint local-state planning will be crucial to Minnesota's current effort to increase the capacity of local communities to prevent delinquency and treat delinquents through its Community Corrections Act.[17] This approach, spearheaded by the Department of Corrections, reinforces the thrust of the Governor's Commission on Crime Prevention and Control toward development of more adequate resources within local communities. This Commission strongly approves the direction of such planning, but also notes that the approach requires a very high level of leadership if it is to be successful. Certain demands and dangers are obvious. Local agencies will be required to assume new and added responsibilities, and to forge new alliances with agencies both public and private, sometimes through intercounty efforts. The Department will be required to undertake continuing redefinition of its role as it attempts to stimulate and support local and regional planning while providing direct services which supplement and support what can and should be undertaken at local and regional levels. All of

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[17] Minn. Stat. c. 401 (1975)

this requires a high quality of leadership from everyone concerned. Again the Commission recommends careful monitoring of experience by the legislature to assess need for modification in the act and adjustments in the level of funding provided.

APPENDIX A

The Constitutional Aspects of Juvenile Court Laws

A Presentation

by

Maynard E. Pirsig

to the

Supreme Court Juvenile Justice Study Commission

October 15, 1975

The following are the cases decided by the United States Supreme Court with respect to the constitutional aspects of juvenile court laws.

Kent v. U. S., 541. Opinion by Mr. Justice Fortas.

This was a transfer case under a federal statute which at the time required only a "full investigation" before a transfer for criminal prosecution was authorized.

The juvenile court transferred the case without granting the juvenile's attorney's request for a hearing and an opportunity to see the file prepared by the Social Service staff for the court. No statement of reasons was filed by the judge.

It was held that this did not meet the statutory and due process requirements. The court was critical of the parens patriae doctrine and of labeling delinquency proceedings as "civil" and not "criminal." It observed also "There is much evidence that some juvenile courts, including that of the District of Columbia, lack the personnel, facilities and

techniques to perform adequately as representatives of the State in a parens patriae capacity, at least with respect to children charged with law violation."

Waiver of jurisdiction to the criminal court was regarded as "critically important" since transfer denies the child of important rights under the juvenile court law.

It was held that the juvenile court judge must give his reasons for the transfer so that meaningful review was possible, that a hearing must be held and that counsel must be given access to the social records considered by the court.

Without noting their significance, the court set out in an Appendix a Memorandum of the Juvenile Court Judge of the District of Columbia, part of which read as follows:

> "The determinative factors which will be considered by the judge in deciding whether the Juvenile Court's jurisdiction over such offenses will be waived are the following:
>
> 1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
>
> 2. Whether the alleged offense was committed in an aggressive, violent, pre-meditated or willful manner.
>
> 3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
>
> 4. The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment (to be determined by consultation with the United States Attorney).

5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the U. S. District Court for the District of Columbia.

6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.

7. The record and previous history of the juvenile, including previous contacts with the Youth Aid Division, other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to this Court, or prior commitments to juvenile institutions.

8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court.

It will be the responsibility of any officer of the Court's staff assigned to make the investigation of any complaint in which waiver of jurisdiction is being considered to develop fully all available information which may bear upon the criteria and factors set forth above. Although not all such factors will be involved in an individual case, the Judge will consider the relevant factors in a specific case before reaching a conclusion to waive juvenile jurisdiction and transfer the case to the U. S. District Court for the District of Columbia for trial under the adult procedures of that Court."

Application of Gault, 387 U. S. 1. Opinion by Mr. Justice Fortas.

This case involved the constitutional requirements of an adjudicatory hearing. The court through the same Justice Fortas, dealt with four specific issues and held:

(1) Adequate notice of the charge in a delinquency case must be given. A General charge is not sufficient.

(2) The child and his parents must be told of his right to counsel and to appointed counsel if indigent.

(3) The child has a right to confront the witnesses who testify against him.

(4) He must be told that he need not incriminate himself.

For present purposes, the more important phase of the case is the general discussion which preceded these specifics. The court referred in critical terms to the doctrine of parens patraie and the theory that the state was acting in loco parentis. It observed that "unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure."

Concerning the special benefits intended by the juvenile court system, the court observed, "the observance of due process standards, intelligently and not ruthlessly administered, will not compel the States to abandon or displace any of the substantive benefits of the juvenile process."

In short, the court believed that the applications of due process requirements such as those above listed would not prevent the realization of the purposes of the juvenile court system.

The court, however, thought the reality of the situation should be recognized. The child is charged with misconduct. He may be deprived of his liberty and committed to an institution. "Instead of mother and father and sisters and brothers and friends and classmates, his world is peopled by guards, custodians, state employees, and 'delinquents' confined with him for anything from waywardness to rape and homicide."

The court also noted the minor character of the specific charge in the case, obscene language over the telephone, a misdemeanor, carrying a maximum imprisonment of 6 months. As a juvenile "he was committed to custody for a maximum of six years."

In re Winship, 397 U. S. 358. Opinion by Mr. Justice Brennan.

The issue in this case was "whether proof beyond a reasonable doubt is among the 'essentials of due process and fair treatment' required during the adjudicatory stage when a juvenile is charged with an act which would constitute a crime if committed by an adult." It was held that it was.

The court construed Gault as deciding that "although the Fourteenth Amendment

does not require that the hearing stage conform with all the requirements of a criminal trial or even of the usual administrative proceeding, the Due Process Clause does require application during the adjudicatory hearing of 'the essentials of due process and fair treatment'". Proof beyond a reasonable doubt fell within that requirement. The court observed:

"Nor do we perceive any merit in the argument that to afford juveniles the protection of proof beyond a reasonable doubt would risk destruction of beneficial aspects of the juvenile process.* Use of the reasonable-doubt standard during the adjudicatory hearing will not disturb New York's policies that a finding that a child has violated a criminal law does not constitute a criminal conviction, that such a finding does not deprive the child of his civil rights, and that juvenile proceedings are confidential. Nor will there be any effect on the informality, flexibility, or speed of the hearing at which the factfinding takes place. And the opportunity during the post-adjudicatory or dispositional hearing for a wide-ranging review of the child's history and for his individualized treatment will remain unimpaired. Similarly, there will be no effect on the procedures distinctive to juvenile proceedings that are employed prior to the adjudicatory hearing."

Chief Justice Burger dissented stating:

> "The original concept of the juvenile court system was to provide a benevolent and less formal means than criminal courts could provide for dealing with the special and often sensitive problems of youthful offenders. Since I see no constitutional requirement of due process sufficient to overcome the legislative judgment of the States in this area, I dissent from further strait-jacketing of an already overly restricted system. What the juvenile court system needs is not more but less of the trappings of legal procedure and judicial formalism; the juvenile court system requires breathing room and flexibility in order to survive, if it can survive the repeated assaults from this Court.
>
> Much of the judicial attitude manifested by the Court's opinion today and earlier holdings in this field is really a protest against inadequate juvenile court staffs and facilities; we 'burn down the stable to get rid of the mice.' The lack of support and the distressing growth of juvenile crime have combined to make for a literal breakdown in many if not most juvenile courts. Constitutional problems were not seen while those courts functioned in an atmosphere where juvenile judges were not crushed with an avalanche of cases.

*[Footnote omitted.]

> My hope is that today's decision will not spell the end of a generously conceived program of compassionate treatment intended to mitigate the rigors and trauma of exposing youthful offenders to a traditional criminal court; each step we take turns the clock back to the pre-juvenile-court era. I cannot regard it as a manifestation of progress to transform juvenile courts into criminal courts, which is what we are well on the way to accomplishing. We can only hope the legislative response will not reflect our own by having these courts abolished."

A separate dissent by Justice Black did not relate to the present topic.

Chief Justice Burger's dissent may have represented a turning point in the court's position as reflected in the McKeiver case.

McKeiver v. Pennsylvania, 403 U. S. 528. Opinion by Mr. Justice Blackman.

The question here was whether jury trial is constitutionally required in a delinquency proceeding which might lead to confinement. It was held not under the "fundamental fairness" test of Gault and Winship. The court observed:

> "We must recognize, as the Court has recognized before, that the fond and idealistic hopes of the juvenile court proponents and early reformers of three generations ago have not been realized. The devastating commentary upon the system's failures as a whole, contained in the President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 7-9 (1967), reveals the depth of disappointment in what has been accomplished. Too often the juvenile court judge falls far short of that stalwart, protective, and communicating figure the system envisaged. The community's unwillingness to provide people and facilities and to be concerned, the insufficiency of time devoted, the scarcity of professional help, the inadequacy of dispositional alternatives, and our general lack of knowledge all contribute to dissatisfaction with the experiment.
>
> The Task Force Report, however, also said, id., at 7, 'To say that juvenile courts have failed to achieve their goals is to say no more than what is true of criminal courts in the United States. But failure is most striking when hopes are highest.'
>
> Despite all these disappointments, all these failures, and all these shortcomings, we conclude that trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement. xxxx"

The court then listed numerous reasons why jury trial should not be required. Those pertinent to the present discussion are as follows:

> "2. There is a possibility, at least, that the jury trial, if required as a matter of constitutional precept, will remake the juvenile proceeding into a fully adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding.

3. The Task Force Report, although concededly pre-Gault, is notable for its not making any recommendation that the jury trial be imposed upon the juvenile court system. This is so despite its vivid description of the system's deficiencies and disappointments. Had the Commission deemed this vital to the integrity of the juvenile process, or to the handling of juveniles, surely a recommendation or suggestion to this effect would have appeared. The intimations, instead, are quite the other way. Task Force Report 38. Further it expressly recommends against abandonment of the system and against the return of the juvenile to the criminal courts. [Footnote omitted.]

5. The imposition of the jury trial on the juvenile court system would not strengthen greatly, if at all, the fact-finding function, and would, contrarily, provide an attrition of the juvenile court's assumed ability to function in a unique manner. It would not remedy the defects of the system. Meager as has been the hoped-for advance in the juvenile field, the alternative would be regressive, would lose what has been gained, and would tend once again to place the juvenile squarely in the routine of the criminal process.

6. The juvenile concept held high promise. We are reluctant to say that, despite disappointments of grave dimensions, it still does not hold promise, and we are particularly reluctant to say, as do the Pennsylvania appellants here, that the system cannot accomplish its rehabilitative goals. So much depends on the availability of resources, on the interest and commitment of the public, on willingness to learn, and on understanding as to cause and effect and cure. In this field, as in so many others, one perhaps learns best by doing. We are reluctant to disallow the States to experiment further and to seek in new and different ways the elusive answers to the problems of the young, and we feel that we would be impeding that experimentation by imposing the jury trial. The States, indeed, must go forward. If, in its wisdom, any State feels the jury trial is desirable in all cases, or in certain kinds, there appears to be no impediment to its installing a system embracing that feature. That, however, is the State's privilege and not its obligation.

7. Of course there have been abuses. The Task Force Report has noted them. We refrain from saying at this point that those abuses are of constitutional dimension. They relate to the lack of resources and of dedication rather than to inherent unfairness.

13. Finally, the arguments advanced by the juveniles here are, of course, the identical arguments that underlie the demand for the jury trial for criminal proceedings. The arguments necessarily equate the juvenile proceeding -- or at least the adjudicative phase of it--with the criminal trial. Whether they should be so equated is our issue. Concern about the inapplicability of exclusionary and other rules of evidence, about the juvenile court judge's possible awareness of the juvenile's prior record and of the contents of the social file; about repeated appearances of the same familiar witnesses in the persons of juvenile and probation officers and social workers -- all to the effect that this will create the likelihood of pre-judgment -- chooses to ignore it seems to us, every aspect of fairness, of concern, of sympathy, and of paternal attention that the juvenile court system contemplates.

> If the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system, there is little need for its separate existence. Perhaps that ultimate disillusionment will come one day, but for the moment we are disinclined to give impetus to it."

A particularly acute analysis of the underlying philosophy of the juvenile court system was made by Mr. Justice White in a concurring opinion:

> "The criminal law proceeds on the theory that defendants have a will and are responsible for their actions. A finding of guilt establishes that they have chosen to engage in conduct so reprehensible and injurious to others that they must be punished to deter them and others from crime. Guilty defendants are considered blameworthy; they are branded and treated as such, however much the State also pursues rehabilitative ends in the criminal justice system.
>
> For the most part, the juvenile justice system rests on more deterministic assumptions. Reprehensible acts by juveniles are not deemed the consequence of mature and malevolent choice but of environmental pressures (or lack of them) or of other forces beyond their control. Hence the state legislative judgment not to stigmatize the juvenile delinquent by branding him a criminal; his conduct is not deemed so blameworthy that punishment is required to deter him or others. Coercive measures, where employed, are considered neither retribution nor punishment. Supervision or confinement is aimed at rehabilitation, not at convincing the juvenile of his error simply by imposing pains and penalties. Nor is the purpose to make the juvenile delinquent an object lesson for others, whatever his own merits or demerits may be. A typical disposition in the juvenile court where delinquency is established may authorize confinement until age 21, but it will last no longer and within that period will last only so long as his behavior demonstrates that he remains an unacceptable risk if returned to his family. Nor is the authorization for custody until 21 any measure of the seriousness of the particular act that the juvenile has performed."

Breed v. Jones, U. S., 95 S. Ct. 1779, 1975. Opinion by Chief Justice Burger.

The juvenile court had found the child delinquent after an adjudicatory hearing. After a dispositional hearing, the court transferred the case for criminal prosecution, finding the child "unfit for treatment as a juvenile". He was tried in criminal court and convicted. He now claimed his constitutional right not to be put twice in jeopardy had been violated. The claim was upheld. The court held the child was put in jeopardy by the juvenile court proceedings "whose object is to determine whether he has committed acts that violate a criminal law and whose potential consequences include both the stigma inherent in such a determination

and the deprivation of liberty for many years..." "[S]uch a proceeding imposes heavy pressures and burdens -- psychological, physical, and financial -- on a person charged. The purpose of the Double Jeopardy Clause is to require that he be subject to the experience only once 'for the same offense'".

Another substantial reason was given:

"Quite apart from our conclusions with respect to the burdens on the juvenile court system envisioned by petitioner, we are persuaded that transfer hearings prior to adjudication will aid the objectives of that system. What concerns us here is the dilemma that the possibility of transfer after an adjudicatory hearing presents for a juvenile, a dilemma to which the Court of Appeals alluded. See supra, at 1784. Because of that possibility, a juvenile, thought to be the beneficiary of special consideration may in fact suffer substantial disadvantages. If he appears uncooperative, he runs the risk of an adverse adjudication, as well as of an unfavorable dispositional recommendation [footnote omitted]. If, on the other hand, he is cooperative, he runs the risk of prejudicing his chances in adult court if transfer is ordered. We regard a procedure that results in such a dilemma as at odds with the goal that, to the extent fundamental fairness permits, adjudicatory hearings be informal and nonadversary [Citing Gault, Winship and McKeiver.] Knowledge of the risk of transfer after an adjudicatory hearing can only undermine the potential for informality and cooperation which was intended to be the hallmark of the juvenile court system. Rather than concerning themselves with the matter at hand, establishing innocence or seeking a disposition best suited to individual correctional needs, the juvenile and his attorney are pressed into a posture of adversary wariness that is conducive to neither."

The court again stressed that its decision would have no adverse effects upon the juvenile court system.

Though not necessary to the decision, since the question was not before the court, the court noted that jeopardy attached "when the Juvenile Court, as the trier of the facts, began to hear evidence."

Several conclusions may be drawn from the foregoing cases.

(1) The court recognized that the juvenile courts of the country have not conformed to their objectives. They also recognize that this has been due to inadequate facilities and personnel.

(2) The court has not insisted on imposing all of the constitutional requirements of a criminal case upon juvenile court proceedings, recognizing that it has a unique and distinct role to perform the rehabilitation of the child in his formative years.

(3) The court has required certain basic procedures to be observed in adjudicatory proceedings, e. g., notice of the charges, right to counsel, etc., these under the rubric of "fundamental fairness." Among those is the right not to be subjected to both a juvenile trial and a criminal trial by way of transfer. What is fundamental fairness has been drawn primarily but not exclusively from the criminal law area.

(4) In none of the decisions has the court deprecated the value of attempting to rehabilitate juvenile offenders rather than subjecting them to criminal prosecution. The criticism has been that rehabilitation has not been seriously undertaken. And in McKeiver it is hinted that unless more serious effort in this direction is undertaken, all of the constitutional requirement of a criminal trial may be imposed.

(5) It is evident from these cases that punishment of the child, under whatever label it is undertaken, cannot be a product of a juvenile delinquency proceeding. Rehabilitation must be its sole objective. The court must find not only that the act charged was committed but also that the child may commit further acts if not treated. Absent proof and a finding to this effect, the proceeding must be dismissed. For this reason, the Uniform Juvenile Court Act requires that the petition

must allege and the court must find both the act and the need for treatment. Those states which have adopted the Uniform Act, e. g., North Dakota, Tennessee, Pennsylvania, Georgia, District of Columbia, and some other states such as New York have similar provisions. In a New York case, a juvenile court had found that the child had committed murder but also found that he was no longer in need of treatment and hence dismissed the case.

(6) While procedures have been laid down in the Kent case which must be observed before a child can be transferred by the juvenile court for criminal prosecution, it has not been presented with the question whether there is a denial of equal protection of the laws if a particular child is treatable, but the state has not provided the facilities or personnel by which that treatment may be accomplished, e. g., psychiatric care, adequate supervision, etc. and hence the child is transferred.

In that respect, Minnesota Stat., § 260.125, contains an anomaly. It permits transfer if "the child is not suitable to treatment or that the public safety is not served" under juvenile court law. If the prosecutor does not notify the juvenile court in 60 days that he intends to prosecute, the case goes back to the juvenile court which previously had decided that the child was not treatable. Is he now treatable? and if not, what is the juvenile court to do with him?

(7) There are some ambiguities inherent in the court's decision to apply the double jeopardy doctrine. That doctrine does not bar separate prosecution of each of several crimes committed, whether committed at the same time or at separate times. The court's decision leaves unresolved the following problems:

(a) The child has committed several crimes. He is charged with one of them in juvenile court and found not to have committed it. May he then be charged with one or more of the others?

(b) In the same situation, commission of several crimes, may the juvenile court transfer one of the criminal offenses for criminal

prosecution and retain the others? If acquitted of the transferred offense, may the juvenile court then proceed on the others or transfer one or more of them for criminal prosecution?

(c) In the same situation, the juvenile court finds the child committed one of the offenses, but withholds the offering of evidence on the others. The child is committed to an institution. On his release, may the juvenile court then proceed against him on the other offenses?

The double jeopardy doctrine would not bar any of these steps. The court, however, could invoke the "fundamental fairness" doctrine, as some lower federal courts have, and at least in some of these situations decide in favor of the child.

These difficulties arise because the criminal law, to which the double jeopardy clause is addressed, looks at the criminal act and imposes punishment for it, while the juvenile court is intended to look at the child and his needs, the criminal act being only symtomatic. Hence, the totality of the child's conduct should be before the juvenile court to the extent it is alleged, and any prior misconduct, not considered at the adjudicatory hearing, should not be the basis of new proceedings against him.

Such a resolution of these problems would be consistent with "fundamental fairness", the test referred to in the decisions discussed above.

APPENDIX B

SUPREME COURT JUVENILE JUSTICE STUDY COMMISSION QUESTIONNAIRE AND INTERVIEW RESPONSES

Short Questionnaire for County Court Judges

This questionnaire was sent to county court judges representing all Minnesota counties except those in the Supreme Court Juvenile Justice Study Commission pre-test and sample.*

Number of respondents: 27 judges representing 30 counties.

Response rate: 30/76 counties = 39%.

List of respondents:

County	Judge
Anoka	James T. Knutson
Becker	Sigwel Wood
Blue Earth	Charles C. Johnson
Carver	Edward H. Luedloff
Cass	Keith L. Kraft
Cottonwood	James Remund
Cook, Lake	Walter A. Egeland
Freeborn	W. R. Sturtz
Houston	D. E. Woodworth
Itasca	W. T. Spooner
LeSeuer	Ruth Brown
Lincoln, Lyon	Irving J. Wiltrout
McLeod	L. W. Yost
Martin	Conrad F. Gaarenstroom
Morrison	George P. Wetzel
Mower	Paul Kimball, Jr.
Nobles, Rock	Gary L. Crippen
Polk	Phillip D. Nelson
Renville	James E. Zeug
Scott	Kermit J. Lindmeyer
Sibley	Kenneth W. Bull
Steele	Charles E. Cashman
Swift	R. A. Bodger
Wabasha	Dennis H. Weber
Watonwan	James F. Crowley
Winona	S. A. Sawyer
Yellow Medicine	Frederick M. Ostensoe

*The pre-test county for the study was Chisago; sample counties were Beltrami, Dakota, Hennepin, Nobles, Olmsted, Otter Tail, Pennington, Pope, St. Louis and Sherburne.

(Copies of all questionnaires used are on file in the Office of Delinquency Control, University of Minnesota.)

Short Questionnaire for Probation Officers

This questionnaire was sent to probation departments representing all Minnesota counties except those (11) in the Supreme Court Juvenile Justice Study Commission pre-test and sample.

Number of responses: 35 responses representing 38 counties. (Responses were identified only by county.)

Response rate: 38/76 counties = 50%.

Counties represented in responses:

Anoka
Becker
Big Stone and Traverse
Blue Earth
Brown
Carver
Chippewa
Clay
Crow Wing
Faribault
Fillmore
Freeborn
Jackson
Kandiyohi
Koochching
LeSeuer
Meeker
Mille Lacs
Morrison
Mower
Murray and Pipestone
Nicollet
Norman
Pine
Polk
Redwood
Renville
Rock
Roseau
Sibley
Stearns
Todd and Wadena
Washington
Watonwan
Winona

Short Questionnaire for Chiefs of Police

This questionnaire was sent to chiefs of police in Minnesota cities with a population over 10,000, except for those located in the Supreme Court Juvenile Justice Study Commission sample counties.

Number of responses: 13 (Responses were not identified.)

Response rate: 13/21 = 62%

QUESTIONNAIRE AND INTERVIEW RESPONSES IN SAMPLE COUNTIES

	Judge				County Attorney				Probation Officer			Law Enforcement*	
	Intake Questionnaire	Certification Questionnaire	Right to Treatment Questionnaire	Interview	Intake Questionnaire	Certification Questionnaire	Right to Treatment Questionnaire	Interview	Intake Questionnaire	Right to Treatment Questionnaire	Interview	Questionnaire	Interview
Beltrami	X	X	X	X	X	X	X	X	X	X	X	X	X
Dakota	X		X	X	X	X	X	X	X	X	X	X	
Hennepin	X	X	X		X	X	X	X	X	X	X	X	X
Nobles	X	X	X	X	X	X	X	X	X	X	X	X	X
Olmsted	X	X	X	X	X	X	X	X	X	X	X	X	X
Otter Tail	X	X	X	X	X	X	X	X	X	X	X	X	X
Pennington	X	X	X	X	X	X	X	X	X	X	X	X	X
Pope	X		X	X	X		X	X	X	X	X	X	X
St. Louis				X	X	X	X	X	X	X	X		X
Sherburne	X	X	X	X	X	X	X	X	X	X	X	X	X

*Depending on the relative populations of the county and the major city within the county, law enforcement respondents were either sheriffs or chiefs of police.

APPENDIX C

COMMISSION WITNESSES AND INTERVIEWEES

The following is a list of persons who appeared at hearings before the Commission or who provided suggestions or testimony for the Commission's consideration through informal conferences.

Henrietta Adams, Director
Project deNovo, Minneapolis

Captain Donald Arneson
Director, Juvenile Division
Minneapolis Police Department

Honorable Lindsay Arthur
District Court Judge
Juvenile Division
Hennepin County

Dennis Chapman, Group Leader
Project Newgate

Bill Bendix
Charles Dufour
Dale Howie
Project Newgate residents

Tollie Flippin, Director
Hirambee Group Home

Richard Fritzke, Director
Department of Court Services
Anoka County

Honorable Archie Gingold
Juvenile Court Judge
Ramsey County

Lieutenant Martin Gross
Juvenile Division
Minneapolis Police Department

Honorable James Gunderson
Judge of County Court
Chisago, Isanti and
Pine Counties

Chester Harrison
Project deNovo, Minneapolis

C. Paul Jones
State Public Defender
State of Minnesota

Patrick Mack
Deputy Commissioner
Department of Corrections

Gerald O'Rourke, Superintendent
Minnesota State Training School
Red Wing

John Poupart, Director
Anishinabe Longhouse
Minneapolis

Orville B. Pung
Deputy Commissioner
Minnesota Department of
Corrections

Kenneth Schoen
Commissioner of Corrections
State of Minnesota

John Trojohn
Assistant County Attorney
Hennepin County

Wright Walling
Assistant Public Defender
Hennepin County

Kenneth Young
Director of Court Services
Hennepin County