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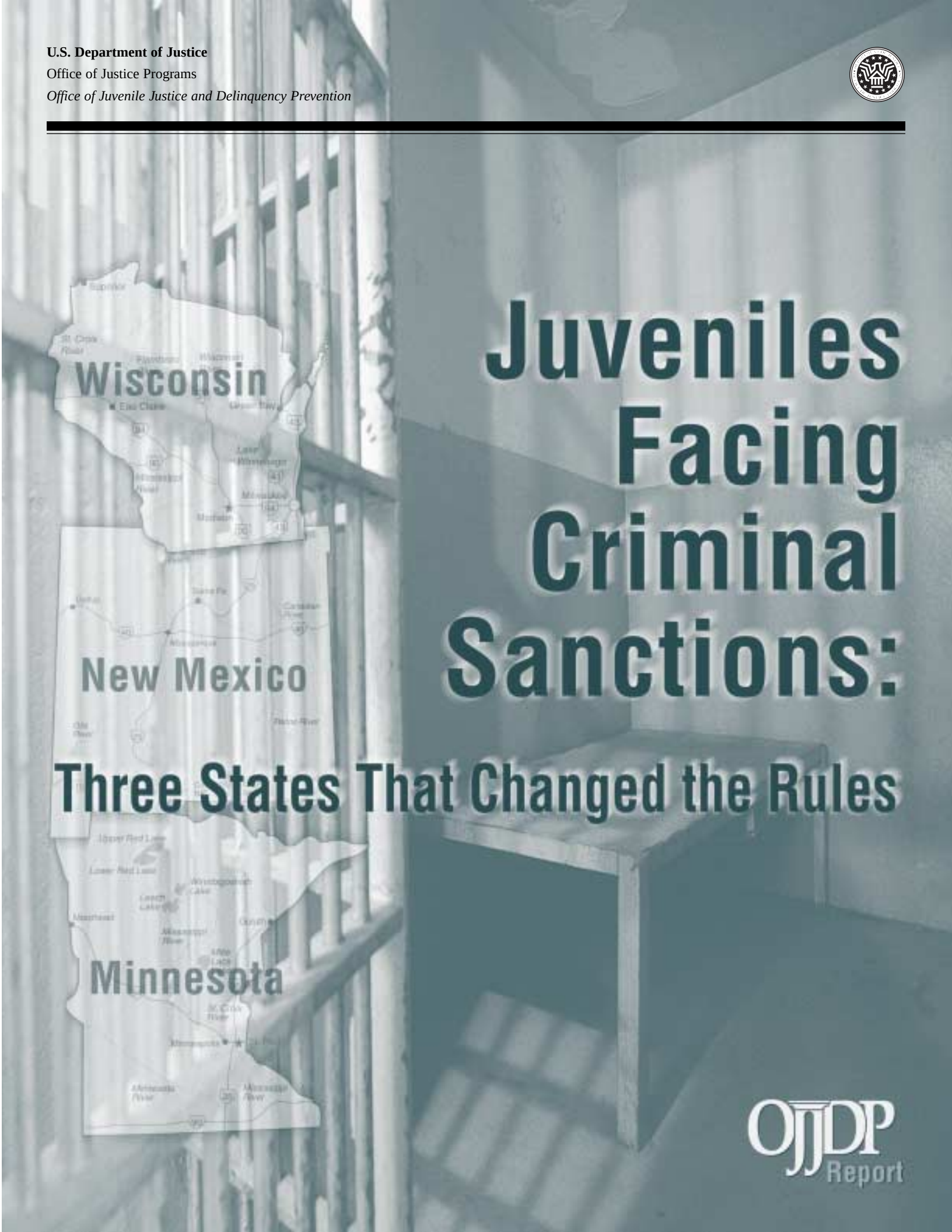
Office of Juvenile Justice and Delinquency Prevention



Juveniles Facing Criminal Sanctions:

Three States That Changed the Rules

OJJDP Report

Office of Juvenile Justice and Delinquency Prevention

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) was established by the President and Congress through the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, Public Law 93–415, as amended. Located within the Office of Justice Programs of the U.S. Department of Justice, OJJDP's goal is to provide national leadership in addressing the issues of juvenile delinquency and improving juvenile justice.

OJJDP sponsors a broad array of research, program, and training initiatives to improve the juvenile justice system as a whole, as well as to benefit individual youth-serving agencies. These initiatives are carried out by seven components within OJJDP, described below.

Research and Program Development Division develops knowledge on national trends in juvenile delinquency; supports a program for data collection and information sharing that incorporates elements of statistical and systems development; identifies how delinquency develops and the best methods for its prevention, intervention, and treatment; and analyzes practices and trends in the juvenile justice system.

Training and Technical Assistance Division provides juvenile justice training and technical assistance to Federal, State, and local governments; law enforcement, judiciary, and corrections personnel; and private agencies, educational institutions, and community organizations.

Special Emphasis Division provides discretionary funds to public and private agencies, organizations, and individuals to replicate tested approaches to delinquency prevention, treatment, and control in such pertinent areas as chronic juvenile offenders, community-based sanctions, and the disproportionate representation of minorities in the juvenile justice system.

State Relations and Assistance Division supports collaborative efforts by States to carry out the mandates of the JJDP Act by providing formula grant funds to States; furnishing technical assistance to States, local governments, and private agencies; and monitoring State compliance with the JJDP Act.

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The mission of OJJDP is to provide national leadership, coordination, and resources to prevent juvenile victimization and respond appropriately to juvenile delinquency. This is accomplished through developing and implementing prevention programs and a juvenile justice system that protects the public safety, holds juvenile offenders accountable, and provides treatment and rehabilitative services based on the needs of each individual juvenile.

Juveniles Facing Criminal Sanctions: Three States That Changed the Rules

Report

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Foreword

Despite a steady downturn in juvenile violent crime over the past several years, the 1990's witnessed a growing number of juveniles being waived or transferred to criminal court.

This Report examines the use made of adult criminal sanctions by three States: Minnesota, New Mexico, and Wisconsin. While each of these States has turned to the criminal justice system to buttress its juvenile justice system, each has done so in a different way with distinctive implications.

Minnesota's use of a new "extended juvenile jurisdiction" category of juvenile offender provides juvenile court judges with an alternative sentencing option that reinforces strong juvenile sanctions with the potential of even more serious adult correctional sanctions.

New Mexico's blended sentencing reform allows juvenile court judges to impose adult correctional sanctions (which result in criminal convictions) on a broad new category of "youthful offenders," while transferring a narrower category of "serious youthful offenders" to the jurisdiction of adult criminal courts.

Wisconsin's reform was to transfer all 17-year-old juveniles from the original jurisdiction of the juvenile court to the jurisdiction of the criminal court.

The Report provides case studies of each State's approach to reform. The particular reform is detailed, its significance is noted, and its goals are elucidated. The impact of the reform on the juvenile justice and criminal justice systems is also described.

Every State's juvenile justice system is influenced in some way by its adult criminal justice system. The examples provided by this Report and by analogous studies will serve to educate policymakers seeking to clarify the roles of, and the relationships between, the two systems in their State.

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Executive Summary

The decade of the 1990's saw unprecedented change in the history of America's juvenile justice system as State after State cracked down on serious, violent juvenile crime. New laws generally involve expanded eligibility for criminal court processing and sanctioning and reduced confidentiality protections for a subset of juvenile offenders. From 1992 through 1997, all but three States changed their laws in one or more of these areas.

Previous publications have documented the overall direction and magnitude of these nationwide changes (see Torbet et al., 1996; Torbet and Szymanski, 1998) and delineated age and offense distinctions among State transfer provisions (see Griffin, Torbet, and Szymanski, 1998). This Report examines the actual implementation of distinctive approaches to juvenile justice reform in three States and summarizes the lessons learned from these case studies and from the authors' analysis of State legislative activity. The case studies contribute to the body of knowledge on transfer and sentencing by providing rich descriptive information on the background of the reforms and the impact of legislative, programming, and policy changes on the juvenile and criminal justice systems at the State and local levels.

The three States whose reforms are examined were chosen for study both because they embarked on significant but discrete experiments and because their approaches are in some sense representative of broader national trends. Wisconsin categorically excluded all 17-year-olds from juvenile court jurisdiction, and New Mexico and Minnesota expanded juvenile court judges' sentencing authority. The case studies, conducted in the fall of 1998, involved site visits, focus group meetings, and individual and group interviews with officials of both juvenile and criminal justice systems in local urban and rural jurisdictions and at the State level. Whenever possible, the authors analyzed pertinent case processing statistics bearing on the States' reform efforts. The first two chapters provide background information on the reforms in general, putting them in context with trends in other States. The next three chapters present the individual case studies, and the final chapter offers lessons learned.

Background and Context of the Reforms

Wisconsin: The Categorical Exclusion Approach

Wisconsin has taken the route of wholesale age exclusion, i.e., of "defining adulthood down," for purposes of routine criminal prosecution and sentencing, from age 18 to 17. Wisconsin joined New Hampshire, which effected a similar change in 1996, in being the only States in at least 20 years to pass laws excluding an entire age group from juvenile court jurisdiction. They join 11 other States that have long excluded 17-year-olds from the original jurisdiction of juvenile court—among them 3 that also exclude 16-year-olds. Most States, most of the time, have defined the age of adult criminal responsibility as beginning at age 18. In fact, the proportion of States that do so has expanded in recent decades, from about two-thirds in the 1950's to about three-quarters today.

Although Wisconsin's provision lowering the upper age of juvenile court jurisdiction is the broadest form of statutory exclusion, it is only one type of the more common exclusion laws that specify certain offenses for automatic or mandatory transfer. As of the end of the 1997 legislative session, no fewer than 36 States specified some offense category for which criminal court handling of accused juveniles was mandatory via either statutory exclusion or

mandatory waiver provisions. When the effects of these statutory exclusion and mandatory waiver provisions are considered together with those brought about by lowering the age of adult criminal responsibility, it becomes clear that State legislators are "transferring" far more young people to criminal court than either judges or prosecutors. Wisconsin's reform afforded a unique opportunity to gauge the consequences of instantaneously shifting a huge and diverse group of juveniles into the criminal system.

New Mexico and Minnesota: The Sentencing Reform Approach

While most of the recent juvenile justice reform efforts have focused on the various mechanisms by which juveniles may be tried in criminal courts (via waiver, prosecutorial direct file, and statutory exclusion), some have focused on the *sanctioning* of juveniles adjudicated or convicted of a serious or violent offense. New laws mandating offense-based sanctioning via mandatory minimums and sentencing matrices are dictated by what the offender has done and emphasize punishment and incapacitation over rehabilitation. But a significant number of other States have provided judges with more rather than less flexibility in fashioning sanctions that are both tough and tailored to individual circumstances. These "blended sentencing" schemes allow judges faced with the task of sanctioning serious juvenile offenders to choose between juvenile and criminal sanctions—or to impose both at the same time—rather than restricting them solely to one system or the other.

New Mexico and Minnesota each enacted a form of blended sentencing during the 1990's. At the end of the 1997 legislative session, New Mexico was the only State that allowed its juvenile courts to hand out an immediately effective juvenile *or* adult sanction to a broad new category of "youthful offenders" previously eligible for waiver to criminal court. In youthful offender cases in which the juvenile justice court imposes an adult criminal sanction, the determination of guilt at trial becomes a conviction for purposes of the New Mexico Criminal Code. Minnesota's "extended jurisdiction juvenile" (EJJ) law featured a "one-last-chance" option that gave juvenile courts an option to sentence serious or repeat young offenders to a juvenile sanction with the threat of a more serious criminal sanction.

Wisconsin's Case Study

In a broad stroke, the Wisconsin legislature reduced the number of youth in the State eligible for juvenile court jurisdiction by 12 percent and redefined the boundaries of adulthood. Effective January 1, 1996:

> . . . for purposes of investigating or prosecuting a person who is alleged to have violated any state or federal criminal law or any civil law or municipal ordinance, "adult" means a person who has attained 17 years of age. Wis. Stat. Ann., sec. 938.02(1).

Lowering the age of criminal court jurisdiction in Wisconsin was, in large measure, a response to several highly visible crimes committed by juveniles and to dramatic increases in the juvenile crime rate. The three goals offered by policymakers for the change were to promote individual accountability for more mature delinquents, achieve age consistency with two neighboring States, and focus juvenile justice resources on younger offenders. The third goal was made possible by a provision that lowered the juvenile court's minimum age of original jurisdiction for delinquency from 12 to 10 years.

Impact on the Juvenile Justice System's Workload

- The workloads of juvenile courts, secure detention facilities, and juvenile correctional institutions all decreased significantly after Wisconsin's reform—even with the addition of 10- and 11-year-olds to the juvenile court's jurisdiction. Prior to the reforms, 17-year-olds accounted for one-fifth of the referrals to juvenile court and one-quarter of the secure detention and juvenile corrections admissions. Respondents speculated

that removing 17-year-olds from the juvenile court's jurisdiction—together with decreases in juvenile arrests for index offenses and overall referrals to juvenile court—had influenced the workload reductions.

- Institutional populations temporarily declined but quickly returned to prereform levels due in part to longer periods of commitment made possible by a provision that increased the extended age of juvenile court jurisdiction to age 25 for certain offenders.
- Additional resources for younger juveniles did not materialize. The temporary reduction in the population at juvenile institutions resulted in an increase in per diem charges to counties. As a result, few resources were freed up to enhance prevention and early intervention services.

Impact on the Criminal Justice System's Workload

- The number of 17-year-olds admitted to jails and prisons in Wisconsin increased dramatically the first year after the change. Jail admissions of 17-year-olds increased by more than 40 percent between 1996 and 1997; prison admissions increased by 70 percent over a 3-year period (1995–97).

Impact on Policy and Programming in Jails and Prisons

- Many respondents indicated that the reform had merely widened the net for 17-year-olds who commit less serious offenses to receive a criminal sanction. They maintained that prior to the change, 17-year-olds who committed serious or violent offenses were likely to go to criminal court via judicial waiver. As a result, the criminal justice system was strapped to meet the needs of a younger population with existing resources (e.g., effective diversion programs or "deferred prosecution" for 17-year-olds whose offenses were minor).
- At least initially, the reform reduced the age threshold for judicial waiver. Respondents suggested that prior to the change, simply being 17 years old increased the odds of a waiver filing. Despite a conscious policy to resist lowering the waiver threshold, waiver petitions involving 16-year-olds increased 90 percent in Milwaukee County during the first year after the change.
- The "in-between" status of 17-year-olds created problems for the adult criminal corrections system. Except for purposes of criminal responsibility, 17-year-olds continue to be minors under Wisconsin law and are subject to mandatory education laws and laws requiring parental consent for medical treatment. In three of the four study sites, jailers and local school districts have collaborated to meet requirements for providing classroom opportunities to a population of inmates who had been denied the service prior to the reforms because small numbers made compliance expensive. Respondents reported that the culture of the jails has been positively affected by these opportunities.
- Adult probation agents and public defenders reported challenges in working with 17-year-olds that arise because of the offenders' immaturity and dependence on their families.

Three years after the reform took effect, practitioners in both the criminal and the juvenile justice systems generally acknowledged that two of the three goals offered by policymakers had been met. First and foremost, respondents agreed that the adult criminal corrections system held 17-year-olds accountable, particularly those who violate the terms of their probation, by restricting their freedom. However, many suggested that this came at the cost of widening the net for 17-year-olds who commit less serious offenses and that the criminal justice system is ill equipped to hold these youth accountable, protect public safety, and provide opportunities to develop competencies for responsible living—the balancing act the legislature intends for the juvenile justice system in Wisconsin. Second, although the reform brought Wisconsin into line with the age of adult criminal responsibility in the neighboring States of Illinois and Michigan, there was widespread skepticism as to the value of this aspect of the reform in deterring juvenile crime. As to the third goal, respondents suggested that unintended consequences of

the reform and the addition of 10- and 11-year-olds to the workload of the juvenile justice system had frustrated the shifting of resources to a younger population.

New Mexico's Case Study

New Mexico's 1993 reforms preserved the original intent of its Children's Code for the majority of delinquents while targeting older juveniles who commit serious crimes for certain or potential adult criminal corrections responses. The State accomplished these reforms by repealing its judicial waiver law in favor of a law giving juvenile court judges the option of imposing juvenile or criminal sanctions on a certain class of offenders (provided the prosecutor files a notice of intent to seek criminal sanctions) and by excluding 15- to 17-year-olds charged with first-degree murder from the juvenile court's jurisdiction. New Mexico is the only State to empower its juvenile court judges to choose among the widest possible range of sanctions (all immediately effective), from juvenile probation to prison sentences, for a new category of "youthful offenders": 14- to 17-year-olds charged with certain felonies.

Implementation Issues

The State conducted very little initial planning on how to implement reforms. Most judges and other justice professionals believed that the legislature had intended a punitive response for juveniles who commit the most serious offenses. They viewed the juvenile corrections system as unprepared or inappropriate for these youthful offenders and therefore considered criminal sanctions the best response. Although the legislature authorized—and the State's Juvenile Justice Advisory Committee recommended—that the Department of Corrections (DOC) implement specialized programming for juveniles in prisons and segregate them from adult offenders, DOC chose to do neither because of the small number of juveniles expected to be sentenced under the new law. As a result, no new programming was deemed necessary in criminal or juvenile corrections, no new funding was appropriated, and no training regarding the new law was conducted.

Impact on Case Processing

- The new law created confusion at the local level regarding who qualified for the new offender classifications and where juveniles should be detained prior to trial. Amended court rules clarified that youth in both the serious youthful offender classification and the youthful offender classification be detained in a juvenile facility until sentencing, although there are circumstances under which a judge may order a serious juvenile offender to an adult jail.
- Prosecutors have expanded authority under the new law. Prosecutors make the initial decision to seek a criminal sanction in youthful offender cases. If the case meets age and offense criteria, the prosecutor may seek a criminal sanction by filing a notice of intent within 10 days of filing the delinquency petition.
- Significant variations in practice were found among the rural and urban districts studied. In the rural district, the prosecutor had sought criminal sanctions against all juveniles who met youthful offender criteria. The prosecutor in one urban district estimated that he had sought criminal sanctions in 70 to 80 cases per year and rejected that option in two to three times as many eligible cases. While considerable prosecutorial discretion exists under the new law, most respondents indicated that the statute provides a reasonable check on that discretion.
- No statewide data exist on the number of cases that are eligible for youthful offender designation or on the proportion of cases for which the prosecutor seeks a criminal sanction over a juvenile sanction.
- Plea bargaining is common. The new blended sentencing law has resulted in prosecutors using the threat of a criminal sanction in negotiations to obtain pleas that guarantee juvenile sanctions.

Impact on Sentencing

- Under the new statute, Children's Court judges—who have general trial jurisdiction and may preside over criminal trials—can impose either a juvenile sanction or a criminal sanction in youthful offender cases. However, the criminal sanction can be imposed only in those cases in which the prosecutor has filed a notice of intent to seek the criminal sanction. Some judges felt hamstrung by that constraint, particularly those holding negative opinions of the juvenile corrections system.

- An effect of eliminating the judicial waiver provision was to move the amenability decision from the pretrial stage to the sentencing stage. In fact, under the new blended sentencing law, the sentencing phase looks very much like the old waiver process since the judge must consider essentially the same factors delineated in *Kent* v. *United States* for waiver determinations. The exception is that because guilt has already been established, the juvenile is permitted to talk about the crime during the psychological evaluation, thus giving the judge access to all relevant information.

- Overall, in the districts studied, a very small proportion of youthful offenders actually received a criminal sanction, and of those who did, only a few received a "straight prison term" (i.e., one for which none of the sentence was suspended). Youthful offenders and serious youthful offenders sentenced to prison were predominantly Hispanic males.

Impact on Correctional Resources

- Some judges reported that their lack of confidence in New Mexico's juvenile corrections system's ability to either protect the public or rehabilitate offenders influenced their sentencing decisions.

- The new blended sentencing law put added burdens on adult probation departments. Increased workloads and an unfamiliar client—one who may not be old enough to drive, find suitable employment, sign a lease, or make decisions independent of his or her family—had caused one urban department to assign certain officers to a strictly juvenile caseload. Adult probation officers reported that juveniles, unaccustomed to strict reporting requirements, often violated the terms of their probation or parole and quickly found themselves sent to prison to serve their full terms.

Five years after the law was passed, prosecutors and judges reported no sense of nostalgia for the State's previous judicial waiver law but rather satisfaction with the discretion they have been given to make individualized case decisions. One drawback of New Mexico's reforms results from the State's lack of a clear vision or strategy for correctional programming for youthful offenders. Another limitation relates to the lack of purposeful data collection for examining designation and sentencing decisions and outcomes.

Minnesota's Case Study

Minnesota's 1994 reforms created an expanded sentencing option that allows the juvenile court to impose both an extended juvenile disposition and a stayed criminal sanction on a new legal category of juveniles referred to as extended jurisdiction juvenile (EJJ). The legislative intent was to give juveniles who have committed serious or repeat offenses one last chance at success in the juvenile system—with the threat of criminal sanctions "hanging over their heads" if they reoffend. The EJJ legislation represented a compromise between those who wanted a more punitive response to juvenile crime and those who wanted to salvage and bolster the juvenile justice response.

Implementation Issues

- There was a lag in the development of State policy related to the EJJ legislation and a lack of effective community planning to guide local implementation. Development of local practice took place in isolation, and there was some confusion in the field as to the intent of EJJ legislation.
- A 1-year lag between enactment of the reforms and allocation of new funding—in the form of a subsidy to counties to deliver or purchase services for EJJ's—created a gap in the development of new programs and services.

Impact on Case Processing

- The legislation created four rather complex scenarios under which a case could receive an EJJ designation, two of which require a public safety consideration based on the seriousness of the alleged offense and the juvenile's prior court record. Districts vary significantly in what they consider a serious offense. Each district, through the policies of its prosecutors and judges, has set its own community standards.
- The profile of youth receiving EJJ designation appears much different from what the legislature intended (e.g., serious first-time offenders as opposed to serious chronic offenders). The profile also reveals that African Americans made up a disproportionate share of offenders who received EJJ designations.
- Because prosecutors have taken a more aggressive approach with EJJ cases and because the suspended criminal sanction places EJJ youth in greater jeopardy, public defenders have mounted more vigorous defenses of EJJ cases. However, plea bargaining is common—especially in cases involving first-time serious offenders in which the motion for adult certification is bargained down to EJJ.

Impact on Sentencing

- Rural/urban differences exist in the disposition of EJJ cases. Judges in nonmetropolitan counties sent 28 percent of EJJ offenders to DOC facilities, whereas judges in an urban county sent just 2 percent of EJJ offenders to prison.
- The availability of local placement options and the cost of out-of-community placements were factors in the disposition of EJJ cases in both urban and rural courts.
- Judges are disinclined to impose sanctions on juveniles that are harsher than the sanctions juveniles would have received if they had been tried in the adult criminal system. (Minnesota has the lowest adult incarceration rate in the United States.) Some judges are also unwilling to invoke the suspended criminal sanction for youth who do not follow the terms of their juvenile sentences.

Impact on Correctional Resources

- Respondents identified access to clinical assessments and an expanded range of age-appropriate services for EJJ offenders as critical needs. The subsidy allocation formula (monies for each EJJ juvenile in a county) has allowed urban counties, with their critical mass of EJJ-designated juveniles, to develop specialized services and supervision resources but has not supported coherent program planning or development in rural areas.
- Both juvenile and adult criminal corrections facilities faced licensure and security issues regarding EJJ youth.

Three and a half years after EJJ implementation, those involved with the new legislation in Minnesota generally believed that it had been a success. The transition period has had its difficulties, but the legislation has

provided resources and also a legal tool that was not otherwise available—particularly the threat of the criminal sanction. Respondents expressed pride that the EJJ legislation was more than just a shift toward getting tough: it also focused on strengthening the community, linking young people with jobs and mentors, and forming partnerships with the private sector. EJJ gets the attention of many youth, because they do not want a felony record—but for some, it has little effect.

Lessons Learned

Although the case studies left many questions unanswered, several broad lessons could be of use to policymakers considering similar reforms:

A disconnect exists between the legislative intent and the actual implementation of new laws. An overall lack of deliberate, statewide planning, inadequate lead times, and insufficient efforts to educate practitioners about the changes have characterized implementation of reforms. Moreover, legislative prescriptions that sought to promote accountability frequently anticipated resources and capacity that did not exist at the time of implementation. Finally, the mandate for change clearly exceeded the capacity of the system to manage, monitor, and evaluate change. Preparation and consideration of fiscal and correctional impact assessments would provide objective data to assess proposed legislation and would pinpoint the potential target population, specify policy and program changes, and anticipate shifts in workload and likely resource gaps.

Blended sentencing laws encourage plea bargaining. Prosecutors in Minnesota and New Mexico routinely use the threat of a criminal sanction as leverage in plea bargaining negotiations. However, it is not clear whether the effect was intended, whether the practice has become more common, or what effect such bargaining has on a juvenile's sense of responsibility for the damage caused.

Blended sentencing provisions expand judicial and prosecutorial discretion. The case studies in New Mexico and Minnesota demonstrate that blended sentencing laws, whether they replace or supplement existing transfer laws, leave juvenile court judges with considerable authority to fashion individualized, offender-based dispositions that allow them to consider not only offense seriousness and community safety but the court history and background of the juvenile before them. Likewise, prosecutors have been given broad discretion to decide when to seek special offender designations or criminal sentencing options. However, unlike a judge's decision, a prosecutor's decision is not generally subject to systematic reporting requirements. Mandatory reporting requirements similar to those long applied to juvenile courts would rectify the situation.

Local application of new sentencing laws varies widely. The case studies documented significant differences in the way local jurisdictions apply blended sentencing laws. Some counties appear to apply them sparingly, while others apply them to all eligible cases. To ensure fair and appropriate decisionmaking, policymakers should consider setting meaningful guidelines for the exercise of both prosecutorial and judicial authority in making designation, sentencing, and review decisions under the reforms. Likewise, expanded sentencing authority requires that judges have an accurate understanding of the sanctions and services available in both the juvenile and adult criminal corrections systems.

New sentencing laws have a disproportionate impact on minorities. Minority juveniles are overrepresented in the offender categories targeted by new transfer and sentencing laws. The case studies confirm that African American and Hispanic youth make up a disproportionate share of offenders who receive extended jurisdiction designations or are subject to motions for criminal sanctions.

Expanded sentencing laws require new resources/interventions. Case study participants called for an expanded range of community-based services and State programs for targeted juveniles. Serious, violent, and/or chronic juvenile offenders represent a small proportion of all delinquents but impose significant costs and

present real threats to their communities. States must be strategic in articulating visions and plans for their juvenile justice systems that consider public safety a significant element and that incorporate best practices and the appropriate continuum of sanctions and services to divert these offenders from their criminal careers.

Wholesale age exclusions have unanticipated consequences. Despite conscious efforts to the contrary, waivers of 16-year-olds in Wisconsin increased 90 percent in Milwaukee County in the first year after the age of criminal responsibility was lowered to 17. The impact of lowering the age of criminal responsibility to a certain age for all juveniles has widened the net for 17-year-olds charged with less serious, nonviolent offenses to receive a criminal sanction, thereby necessitating an increase in prosecutorial resources for diversion of such cases.

The "in-between" status of juveniles creates problems for adult criminal corrections agencies. Except for purposes of adult criminal responsibility, 17-year-olds remain minors under Wisconsin law. Likewise, all youth under 18 tried or sentenced in other States as if they were adults are still minors in all other respects. Most of the policy issues and programming challenges identified in the case studies resulted from the "in-between" legal status of minors in adult criminal corrections facilities.

More data collection and systematic followup are needed to judge the impact of reforms. The case studies shed light on the implementation of a significant group of State-level juvenile justice reforms. However, the real impact of those reforms and others that expose juvenile offenders to criminal sanctions is still largely unknown. State and local officials must make a commitment to assessing the effects of new laws so they can determine the deterrent effects of the laws, the impact of the laws on public safety and victim reparation, and the consequences of introducing juveniles into the adult criminal corrections system.

Introduction

The 1990's will undoubtedly be remembered as one of the more turbulent decades in the history of the American juvenile justice system. Significant and ongoing legislative activity in nearly every State—prompted by public fear and anger over escalating youth violence and doubts about the proportionality and toughness of the system's response—has by now all but transformed the juvenile justice landscape (see Torbet et al., 1996; Torbet and Szymanski, 1998). Most notably, the jurisdiction of the juvenile courts over serious crimes, older juveniles, and repeat offenders has been cut back in State after State. The pool of cases eligible for criminal court handling has been vastly expanded, and critical decisionmaking power in this area has been shifted away from judges and toward prosecutors. A variety of new restrictions have been imposed on the juvenile courts' discretionary powers, often dictating outcomes based on offense seriousness and other objective factors. Confidentiality protections once considered to be vital to the working of the juvenile justice system have been eroded, and procedures representing contrary ideals—open hearings, the free exchange of information—erected in their place. The traditional rehabilitative goals of juvenile sanctioning have been deemphasized in favor of straightforward, adult-style punishment and long-term incapacitation, with fewer allowances for the individual circumstances and special needs of juveniles.

Impetus for Change

Often, the legislative reform process has begun with a single, galvanizing juvenile crime—a senseless murder, some casual viciousness, some schoolyard outrage that is at once simple, stark, and utterly incomprehensible to the public. Very young people *are* committing more serious and violent offenses than in the past, but the crimes precipitating recent reforms have often been spectacularly atypical. Nevertheless, in State after State, these crimes seemed to point the way to a frightening new kind of youth crime—perhaps a new kind of youth—for which the old controls were inadequate and the old assumptions invalid. Public anxiety soon gave way to indignation, as media coverage focused unprecedented attention on those aspects of the traditional juvenile court and corrections system that appeared—especially to those unfamiliar with them—to coddle offenders, slight victims, ignore accountability, and endanger the public. Faced with what they believed was a wholly new kind of juvenile crime, many States began to view the principles at the heart of the old system—the treatment orientation, the concern for offender privacy—as not merely outmoded but dangerous.

An Alternative Model: The Adult Criminal Justice System

The adult criminal justice system presented State policymakers with a ready alternative. Although not perfect, its faults at least differed from those of its juvenile counterpart. In particular, after decades of aggressive prison construction, mandatory minimum sentencing legislation, and the like, the criminal justice system's "toughness" was not open to question. It was, above all, this quality—of deterrent, retributive, incapacitating toughness—that the public seemed to be calling for. Accordingly, the policy solution in many States has been to reshape the existing juvenile justice system to conform more closely to the criminal justice system, to blend or hybridize the two to accommodate some "in-between" category of offender, or literally to substitute the criminal system in situations in which the juvenile system is believed to be inadequate.

Three States

Although the three States examined more closely in the body of this Report—Minnesota, New Mexico, and Wisconsin—have taken distinctive approaches to juvenile justice reform and were chosen as case study subjects in part for that reason, all three turned to the criminal system in an attempt to strengthen the juvenile system in one of the ways described above. In New Mexico, blended sentencing reform has permitted juvenile court judges to impose criminal sanctions on a broad new category of "youthful offenders," while mandating adult criminal court handling of a narrower category of "serious youthful offenders." In Minnesota, the new "extended juvenile jurisdiction" category for juvenile offenders has given juvenile court judges an alternative sentencing option that reinforces a longer juvenile court sanction with the threat of a more serious criminal sentence. Wisconsin, on the other hand, has simply redrawn the jurisdictional border between the juvenile and criminal justice systems, shifting its whole population of 17-year-olds from the original jurisdiction of the former to that of the latter.

Although it may be easy to sketch out the overall intent of these and other recent State-level juvenile justice reforms and to catalog the various approaches taken, the actual results of these reforms are not nearly so easy to assess. In effect, the States have embarked on a number of distinct experiments. Some have targeted very narrow categories of juvenile offenders for experimental handling, while others have swept up huge, broadly defined polymorphous groups. Some have entrusted critical discretionary decisions to the courts, where they must be made on the record and are subject to review and, at least theoretically, capable of being tabulated and analyzed retrospectively by researchers. Others, however, have lodged the same authority with prosecutors, whose methods, approaches, and reasoning are essentially unknowable after the fact and whose actual performance may never be subject to objective measurement. In some States that single out juvenile offenders for placement on an experimental track, it is possible to follow them through the system, profile them as a group, and learn something of what becomes of them. However, where their counterparts, similarly situated, are simply allowed to disappear into the juvenile mainstream, researchers may never be able to compare one group with the other. In fact, many of the recent State-level experiments in juvenile justice reform were instituted with little thought as to how, when, or whether to measure results systematically. Even if the information necessary to judge success or failure were theoretically available, in many States there is no one whose job it is to collect it.

The three case studies contained in this Report represent a first step toward correcting this situation. They focus less on the theory than on the practice of moving juvenile offenders into criminal court or middle-tier/adult sanctioning systems and shed light on implementation issues that are likely to be encountered wherever these approaches are taken. Although only three States are examined in depth, each one was chosen for study because its reforms have significance that extends well beyond its borders. Detailed examination of their experiences will serve to educate policymakers considering similar changes in other States, open up new lines of inquiry, and provide a solid basis for further study.

Introduction to the Case Studies

The three States whose reforms are examined in the body of this Report were chosen for study both because they have taken distinctive, experimental approaches to juvenile justice system reform and because those approaches are in some sense representative of broader national trends.

Wisconsin: The Categorical Exclusion Approach

In general, statutory exclusion provisions are categorical in that the legislature automatically excludes, either by age or by offense, a certain category of juvenile offenders from juvenile court jurisdiction. Wisconsin has taken the route of wholesale age exclusion, of "defining adulthood down," for purposes of routine criminal prosecution and sentencing, from age 18 to age 17. Of course, this in itself is unusual. Most States, most of the time, have defined the age of adult criminal responsibility as beginning at age 18. In fact, the proportion of States that do so has expanded in recent decades, from about two-thirds in the 1950's to about three-quarters today. Nevertheless, several longstanding exceptions to the general rule remain. Three States (Connecticut, New York, and North Carolina) have put the age of adult criminal responsibility at 16 at least since the early 1950's. Eight others (Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, South Carolina, and Texas) have long put the age of adult criminal responsibility at 17. During the 1990's, two States (Wisconsin and New Hampshire) joined the latter group in treating 17-year-olds as adults. In all, 13 States now treat 16- or 17-year-olds as adults for purposes of criminal court processing.

It should be noted that very large numbers of these "underage adults" are routinely processed in the criminal courts of these States. The National Center for Juvenile Justice estimated that in 1996 as many as 218,000 offenders younger than age 18 could have faced trial in criminal courts because State legislatures had set the age of adult criminal responsibility at 16 or 17. In comparison, juvenile court judges waived just 10,000 cases to criminal courts in 1996 (Snyder and Sickmund, 1999).

In addition to age exclusions, there is another group of increasingly common categorical exclusions from juvenile court jurisdiction. As of the end of the 1997 legislative session, no fewer than 36 States specified some offense category for which criminal court handling of accused juveniles—or at least a subset meeting minimum age and/or prior record requirements—was mandatory (Griffin, Torbet, and Szymanski, 1998). These offense-based exclusions, though somewhat more targeted, are similar to those based solely on age in that they are both "wholesale" and "automatic." That is, as a matter of policy, they decide in advance the criminal court handling of large groups of juvenile offenders; preclude consideration of their individual motives, needs, and circumstances; and rule out, insofar as this is possible through legislation, the exercise of case-by-case discretion. When the effects of these sweeping statutory exclusions and mandatory waiver requirements are considered together with those brought about by lowering the age of adult criminal responsibility, it becomes clear that State legislators are "transferring" far more young people to criminal court than either judges or prosecutors.

Wisconsin presented researchers with a chance to observe the effects of one type of wholesale jurisdictional transfer. More important, it afforded a unique opportunity to gauge the consequences of instantaneously shifting a huge and diverse group of juveniles—indeed, one of the most broadly defined and heterogeneous categories possible—into the criminal justice system.

New Mexico and Minnesota: The Sentencing Reform Approach

While most of the juvenile justice reform experiments of recent years have involved the various mechanisms by which juveniles may be tried in criminal courts (waiver, prosecutorial direct file, legislative exclusion), some have focused instead on what comes afterwards—that is, on the *sanctioning* of juvenile offenders. One clearly discernible trend is toward offense-based sanctioning: mandatory minimums and sentencing matrices that are dictated by what the offender has done and that emphasize punishment and incapacitation over rehabilitation and treatment. A significant number of other States, however, have sought to provide judges with more rather than less flexibility in fashioning sanctions for juveniles in serious cases—sanctions that are both tough and tailored to individual circumstances.

New Mexico and Minnesota are among that number. Each enacted a form of blended sentencing during the 1990's. Blended sentencing allows judges faced with the task of sanctioning serious juvenile offenders to choose between juvenile and adult correctional sanctions—or sometimes to impose both at the same time—rather than restricting them solely to one system or the other. Some models supplement existing transfer provisions; others substitute for them in all but murder cases. In some models, the juvenile court can impose an adult sentence that is as binding as that provided by criminal courts, and in others, the adult sentence is suspended pending successful completion of a juvenile sentence (Zimring, 1998). Of the 20 States with such laws at the end of the 1997 legislative session, 9 give blended sentencing authority to *juvenile* court judges in cases in which some defined category of juvenile offender has been adjudicated delinquent. In nine States, blended sentencing authority is exercised by *criminal* court judges, following a juvenile's conviction. Two States, Colorado and Michigan, give blended sentencing options to both juvenile and criminal court judges. (See figure 1, "Blended Sentencing Models, 1997.")

In whichever forum blended sentencing authority is exercised, it may be exclusive or inclusive, and under some circumstances, it may be contiguous:

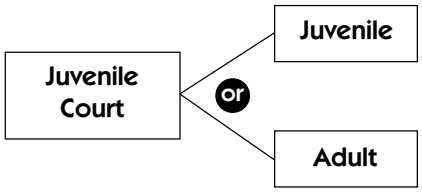
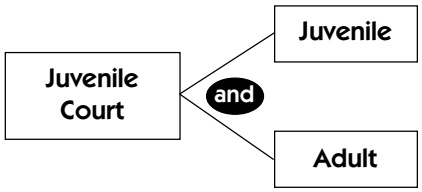
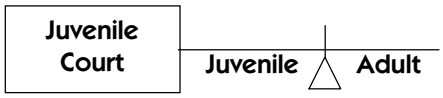
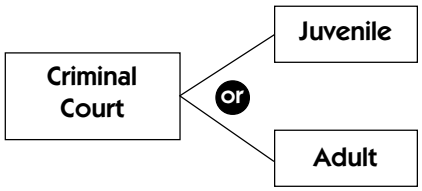
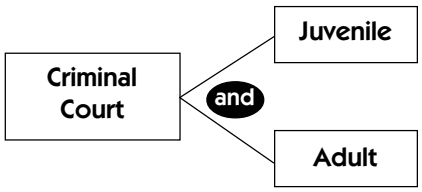
- An exclusive blended sentencing model allows a judge to impose either a juvenile *or* an adult sanction and makes that sanction effective immediately.
- Under an inclusive blended sentencing model, on the other hand, a judge may impose *both* a juvenile and an adult sanction—with the latter usually remaining suspended and becoming effective only in the event of a subsequent violation.
- Finally, some States have enacted contiguous blended sentencing laws, under which a juvenile court may impose a sanction that begins in the juvenile system but lasts beyond the maximum age of extended juvenile court jurisdiction—at which time the offender must be moved into the adult correctional system to serve the remainder of the sentence.

At the end of the 1997 legislative session, New Mexico was the only State in the Nation that gave exclusive blended sentencing authority to its juvenile courts—allowing them to hand out immediately effective adult sentences to a broad category of juveniles previously eligible for waiver to criminal court. Minnesota's version of blended sentencing reform, on the other hand, was inclusive. Specifically, it featured a "one-last-chance" alternative sentencing option targeted specifically at serious and repeat young offenders, but it likewise entrusted sanctioning authority in such cases to its juvenile courts. Each of these experiments is worthy of careful analysis, because each represents an attempt to strengthen the juvenile court's sanctioning authority while preserving its capacity to provide an individualized judicial response to each offender.

Method

To date, much of the statistical research on treating juveniles as criminal offenders has focused on the incidence of waiver, the transfer decision, case processing characteristics, and sentencing, usually at a macro (national) level. Legal research has provided comparisons of State transfer laws and the age and offense criteria applied in different provisions. The case studies presented in this Report contribute to the body of knowledge on this issue by providing rich descriptive information on the impact of legislative,

Figure 1. Blended Sentencing Models, 1997*

Court	Type of Sanction	Description	Examples
		*Juvenile—Exclusive Blend:* The juvenile court imposes either juvenile (delinquency) or adult (criminal) sanctions.	New Mexico
		*Juvenile—Inclusive Blend:* The juvenile court imposes both juvenile and adult sanctions, typically suspending the adult sanction.	Connecticut Kansas Michigan Minnesota Montana
		*Juvenile—Contiguous:* The juvenile court imposes a juvenile sanction that would be in force beyond the age of its extended jurisdiction. At that point, the juvenile court determines whether the remainder of that sanction should be served in an adult criminal corrections system.	Colorado Massachusetts Rhode Island South Carolina Texas
		*Criminal—Exclusive Blend:* The criminal court imposes either juvenile or criminal sanctions.	California Colorado Florida Idaho Michigan Oklahoma Virginia West Virginia
		*Criminal—Inclusive Blend:* The criminal court imposes both juvenile and criminal sanctions, typically suspending the criminal sanction.	Arkansas Florida Iowa Missouri Virginia

* Each of the models presented applies to a subset of alleged juvenile offenders specified by State statute.

programming, and policy changes on the juvenile and criminal justice systems at the State and local levels. Even though the experiences described in each case study are in some ways unique to the site that was studied, there are several common issues. Policymakers facing similar changes can benefit from the experiences of others.

In all three States, the investigations forming the basis for the case studies were conducted primarily in the fall of 1998 and involved site visits, focus group meetings, and individual and group interviews. Interviews were conducted in urban and rural judicial districts, with officials and representatives of both the juvenile and criminal justice systems, at State and local levels. At the State level, legislators, reform advocates, directors of juvenile and adult corrections agencies, juvenile justice specialists, and members of criminal and juvenile justice coordinating councils were interviewed. At the local level, judges, district attorneys, public defenders, jail wardens and juvenile detention administrators, juvenile and adult probation directors, law enforcement officers, and victim advocates were interviewed. Study questions focused on three subjects:

- The background of the State's legislative reforms.
- Policy and programmatic changes that occurred as a result of the reforms.
- The impact of these changes on the juvenile and criminal justice systems.

In New Mexico, observers visited the two largest urban judicial districts and a rural district, in addition to conferring with State officials in Santa Fe, interviewing a total of about 60 justice practitioners in the process. In Minnesota, researchers conducted focus group interviews in the largest urban judicial district, a suburban/rural district, and a remote rural district and interviewed State officials in St. Paul, involving a total of about 70 practitioners. The Wisconsin site work involved visits to the State's largest urban jurisdiction, two medium-size urban districts, and a rural district and interviews with State officials in Madison, for a total of more than 60 individuals. In addition to the views and impressions of interview subjects, investigators in all three States analyzed pertinent case processing statistics bearing on the States' reform efforts wherever possible.

Wisconsin's Case Study[1]

The Reform: Removing All 17-Year-Olds From the Original Jurisdiction of the Juvenile Court

Effective January 1, 1996, the Wisconsin legislature made an important alteration in the traditional legal boundary that defines adulthood:

> "Adult" means a person who is 18 years of age or older, except that for purposes of investigating or prosecuting a person who is alleged to have violated any state or federal criminal law or any civil law or municipal ordinance, "adult" means a person who has attained 17 years of age. Wis. Stat. Ann., sec. 938.02(1).

A similar change became effective in New Hampshire in 1996. N.H. Stat. Ann., sec.169–B:2. As a result, the two States became the first in at least 20 years to exclude an entire age group from juvenile court jurisdiction. They join 11 other States that have long excluded 17-year-olds from the original jurisdiction of juvenile court—among them 3 that also exclude 16-year-olds (see table, page 9).

At the same time that the Wisconsin legislature passed the categorical exclusion, it lowered the juvenile court's minimum age of original jurisdiction for delinquency from 12 to 10 years. Fourteen other States have also established a minimum age for delinquency jurisdiction, with specified minimums ranging from age 6 to age 10. Thirty-five States and the District of Columbia, however, specify no minimum age for juvenile court jurisdiction in delinquency matters (Griffin, Torbet, and Szymanski, 1998).

Significance of the Reform

Shifting an entire age group out of the juvenile court's jurisdiction is the broadest form of statutory exclusion. This type of reform allows a State to send more youth younger than age 18 into the criminal justice system than any other transfer mechanism. In a single broad stroke, Wisconsin reduced the number of children in the State eligible for juvenile court jurisdiction by 12 percent, according to 1996 Census estimates. Moreover, in the year that the exclusion took effect, 17-year-olds represented almost 25 percent of the juvenile arrests for violent crime index offenses (murder, forcible rape, robbery, and aggravated assault) and about 15 percent of juvenile arrests for property crime index offenses (burglary, larceny-theft, motor vehicle theft, and arson) (Wisconsin Office of Justice Assistance, 1998). (See sidebar: "Wisconsin Juvenile Justice Reform," page 8.)

Primary Goals of the Reform

According to the Study Committee's report, the purpose of Wisconsin's proposed shift in jurisdictional boundaries was threefold:

- **To promote individual accountability.** The Study Committee's report reflects a general sense that the juvenile justice system in Wisconsin had become a "revolving door" spun by the pressures of a juvenile crime wave. Accordingly, the report suggests that the criminal justice system hold the "more mature" 17-year-old to a greater degree of accountability by threatening the "full range of adult dispositions" for criminal law violations. Several other changes recommended in the report and eventually passed by the legislature also emphasized accountability. The most far reaching of these changes was the rewrite of the Juvenile Code's purpose to

[1] Hunter Hurst, Jr., and Anne Stahl conducted site visits and interviews at the county level in Dane County, Milwaukee County, Racine County, and Sawyer County and at the State level in Madison.

reflect a "balanced approach" to juvenile justice intended to emphasize the goals of offender accountability and community protection. According to respondents interviewed in Wisconsin, the criminal justice system was considered better situated to enforce accountability because of its greater capacity for secure confinement in prisons and, particularly, in county jails. Compared with their counterparts in the juvenile justice system, adult probation and parole were also considered to be in a better position to sanction program violations by imposing time in jail or prison.

- **To achieve consistency with neighboring States.** As the Study Committee noted in its January 1995 report, *Juvenile Justice: A Wisconsin Blueprint for Change (Blueprint)*, several of Wisconsin's neighboring States (including Illinois and Michigan) had already set the age for criminal responsibility lower than 18. Interviews revealed concerns about the inconsistent ages of criminal responsibility in Wisconsin and its neighboring States. In particular, because of Chicago's proximity to the metropolitan centers of southern Wisconsin, respondents were concerned that the different ages of criminal responsibility in Illinois and Wisconsin might encourage sophisticated criminals from Chicago to use older juveniles to expand illicit drug markets in the urban centers of southern Wisconsin. A key policymaker on the Study Committee, for example, believed that lowering the age of criminal responsibility in Wisconsin could help prevent Wisconsin

Wisconsin Juvenile Justice Reform

In response to concerns raised by a number of highly visible violent crimes committed by very young children in Wisconsin and by steep increases in overall rates of juvenile crime in the State (juvenile arrests for violent crime index offenses in the State doubled between 1988 and 1993), Wisconsin's Governor and the State legislature, in the spring of 1994, created a blue-ribbon study committee to assess the effectiveness of the Children's Code and propose recommendations for reform. Removing 17-year-olds from the juvenile court's jurisdiction was among the fundamental changes recommended by the committee (the Wisconsin Juvenile Justice Study Committee) in its January 1995 report, and eventually enacted into law.

As a result, Wisconsin's juvenile justice system was transformed by the 1996 Juvenile Justice Reform Act and selected provisions of the 1995–1997 Biennial Budget Act. In addition to lowering the age of criminal responsibility, key provisions of the reform package included:

- Moving the authority for juvenile corrections from Health and Human Services to the Department of Corrections.
- Modifying an extended jurisdiction classification in juvenile corrections.
- Creating a separate juvenile justice code to deal exclusively with delinquency.
- Redefining the Code's goal to emphasize the "balanced approach."
- Eliminating the right to jury trials.
- Improving victims' access to proceedings and information.
- Changing the lower limit of delinquency jurisdiction from age 12 to age 10.
- Relaxing confidentiality restrictions governing juvenile records.
- Reducing the age limit for various offense-specific exclusions.
- Providing for new juvenile dispositions, including secure detention not to exceed 30 days.

communities from becoming "crime magnets" for offenders from neighboring States.

- **To redirect juvenile justice resources.** The *Blueprint* report also suggested that removing 17-year-olds from the juvenile justice system without reducing State allocations to counties for juvenile justice services would mean that available resources would be directed to a smaller population. Lowering the minimum age of original juvenile court jurisdiction, policymakers believed, would intensify the reallocation of resources, because the limited amount of juvenile justice resources available would be directed toward early intervention with a younger population, one that is more likely to respond to services and sanctions.

Impact of the Changes

Interviews and descriptive statistics indicate that lowering the age of criminal responsibility in Wisconsin has had the immediate impact of reducing the juvenile justice system's workload and shifting resources to a younger population. At the same time, the criminal justice system has been called on to accommodate more minors—in county jails, on adult probation, and, to a lesser extent, in State prisons. As discussed below, the influx of minors into jails

Table. Age of Criminal Responsibility, 1998

Under Age 18 (13 States)		**Age 18** (37 States and the District of Columbia)	
Age 16 (3 States)	**Age 17** (10 States)		
Connecticut	Georgia	Alabama	Montana
New York	Illinois	Alaska	Nebraska
North Carolina	Louisiana	Arizona	Nevada
	Massachusetts	Arkansas	New Jersey
	Michigan	California	New Mexico
	Missouri	Colorado	North Dakota
	New Hampshire (1996)	Delaware	Ohio
	South Carolina	District of Columbia	Oklahoma
	Texas	Florida	Oregon
	Wisconsin (1996)	Hawaii	Pennsylvania
		Idaho	Rhode Island
		Indiana	South Dakota
		Iowa	Tennessee
		Kansas	Utah
		Kentucky	Vermont
		Maine	Virginia
		Maryland	Washington
		Minnesota	West Virginia
		Mississippi	Wyoming

Source: Griffin, P., Torbet, P.M., and Szymanski, L. 1998. *Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions.* Report. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
Note: The table can be converted to define the upper age of original juvenile court jurisdiction by subtracting 1 year from the age heading. For example, the upper age is 15 in Connecticut, New York, and North Carolina.

has caused the most significant policy and programming consequences during the first 3 years of Wisconsin's reform.

Impact on the Juvenile Justice System's Workload

Juvenile Court Cases and Delinquency Services Workload

At the time this exploratory study of Wisconsin's reform was conducted, statewide juvenile court referral and/or disposition information with age detail was not available. However, a transition planning committee surveyed delinquency services staff across the State in 1996. (Of the State's 72 counties, 65 completed the survey.) Survey findings showed that in the year before the change (1995), almost 20 percent of delinquent youth referred to juvenile intake were 17-year-olds (Wisconsin Office of Justice Assistance, 1998). National estimates suggest that 17-year-olds make up approximately 15 percent of the delinquency cases handled by juvenile courts (National Center for Juvenile Justice, 1999). As discussed below, the juvenile court's workload decreased significantly after Wisconsin's reform.

Across the four study sites, juvenile court workload was reduced after the change—even after 10- and 11-year-olds were added to delinquency jurisdiction. The impact was felt both in the State's largest urban jurisdiction, where the volume of referrals dropped by 25 percent between 1995 and 1997 (see sidebar: "Juvenile Court Referrals in Milwaukee County"), and in rural Sawyer County, where delinquency petitions decreased 40 percent during the same period. Delinquency services staff in the four sites generally believed that younger delinquents had filled the space in their workloads left by 17-year-olds excluded from the juvenile court's jurisdiction. Unfortunately, no descriptive caseload statistics spanning the change from 1995 to 1997 were available to support this perception.

Secure Detention for Juveniles

Before being excluded from the juvenile court's jurisdiction in 1996, 17-year-olds accounted for approximately 25 percent of secure detention admissions in Wisconsin. Although the absence of statewide data prevented calculation of the proportion of admissions this population accounted for in the years after the legislative change, detention professionals in the three urban study sites reported a reduction in workload after losing the 17-year-olds. Data provided by Milwaukee County showed that in 1995, 17-year-olds made up 25 percent of the admissions to secure detention in Milwaukee County; 2 years later, they represented less than 10 percent. (In 1997, this group consisted of juveniles who were younger than 17 at the time of their offense and therefore were not covered by the legislative change.) In addition, total detention admissions in Milwaukee dropped by more than one-third between 1995 and 1997. Interviews in Milwaukee suggested that removing 17-year-olds from the juvenile court's original jurisdiction—together with decreases in juvenile arrests for index offenses and overall referrals to juvenile court—had influenced the reduction.

Division of Juvenile Corrections

In the years leading up to the reforms, Wisconsin experienced growth in the number of youth placed in the State's juvenile correctional institutions (JCI's). Admissions, for example, nearly doubled between 1988 and 1995. The removal of 17-year-olds from

Juvenile Court Referrals in Milwaukee County

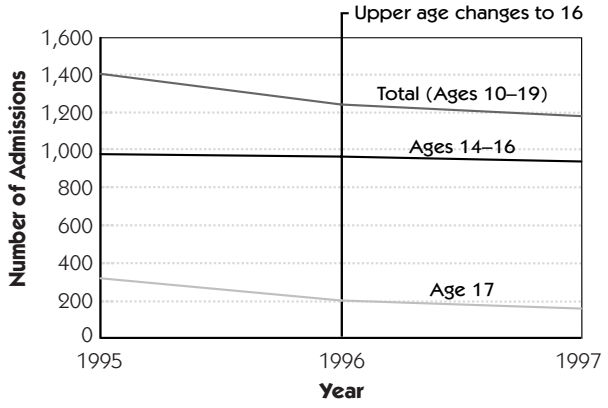
Between 1995 and 1997, the volume of referrals to Milwaukee's Children's Court Center dropped by 25 percent, from more than 8,000 referrals in 1995 to about 6,000 in 1997. This drop occurred while total juvenile arrests declined by approximately 9 percent, and the index arrest rate for juveniles dropped by about 10 percent. In 1997, 17-year-olds represented approximately 20 percent of total juvenile arrests in Milwaukee County and about 15 percent of total juvenile arrests for index crimes.

In 1995, approximately 20 percent of the total referrals to the juvenile division prosecutor in Milwaukee County involved youth who were 17 at the time of their offense. Just 1 year later, after 17-year-olds had been removed from the juvenile court's jurisdiction, the volume of referrals to the prosecutor had dropped by 18 percent.

the juvenile court's original jurisdiction in 1996 directly affected admissions to JCI's by the Department of Correction's (DOC's) Division of Juvenile Corrections. Between 1995 and 1997, admissions of 17-year-olds dropped by almost 50 percent (from about 25 percent of total admissions in 1995 to less than 15 percent in 1997). (See figure 2.)

With regard to the Study Committee's goal of providing more resources to younger juveniles, removing 17-year-olds led to a drop in overall admissions to JCI's (by about 15 percent between 1995 and 1997), but the population decrease required DOC to increase the daily rates that counties pay for institutional placements and community-based services for delinquents. The fixed costs of operating the institutions and providing community programs, in other words, had to be spread over a smaller number of days of care. Interviews, however, suggested that the situation might have been temporary. The overall average daily population in the State's JCI's, in fact, has returned to prereform levels, as have per diem costs, and levels are expected to remain there for the foreseeable future. (See figure 3, page 12.)

Figure 2. Admissions to Juvenile Correctional Institutions in Wisconsin, by Age at Admission, 1995–97



- Juveniles ages 10–13 accounted for fewer than 100 admissions in any year and, despite the lowering of the minimum age of juvenile court jurisdiction to age 10, actually decreased about 10% from 1995 to 1997.
- Juveniles ages 18–19 accounted for fewer than 50 admissions in any year.

Source: Wisconsin Office of Justice Assistance. 1998. *Wisconsin Adult Jail Populations–1997.* Madison, WI: Wisconsin Office of Justice Assistance.

Although corrections officials in Wisconsin attributed the original decrease in the JCI population in part to the removal of 17-year-olds, they observed that other changes to State laws—including a provision authorizing a 30-day disposition in secure detention and licensed private residential care institutions—may also have contributed to the temporary reduction in juvenile corrections placements. On the other hand, they believed that the return to prereform population levels had resulted from—among other factors—longer periods of commitment made possible by a provision that increased the extended age of juvenile court jurisdiction to age 25.

Impact on the Criminal Justice System's Workload

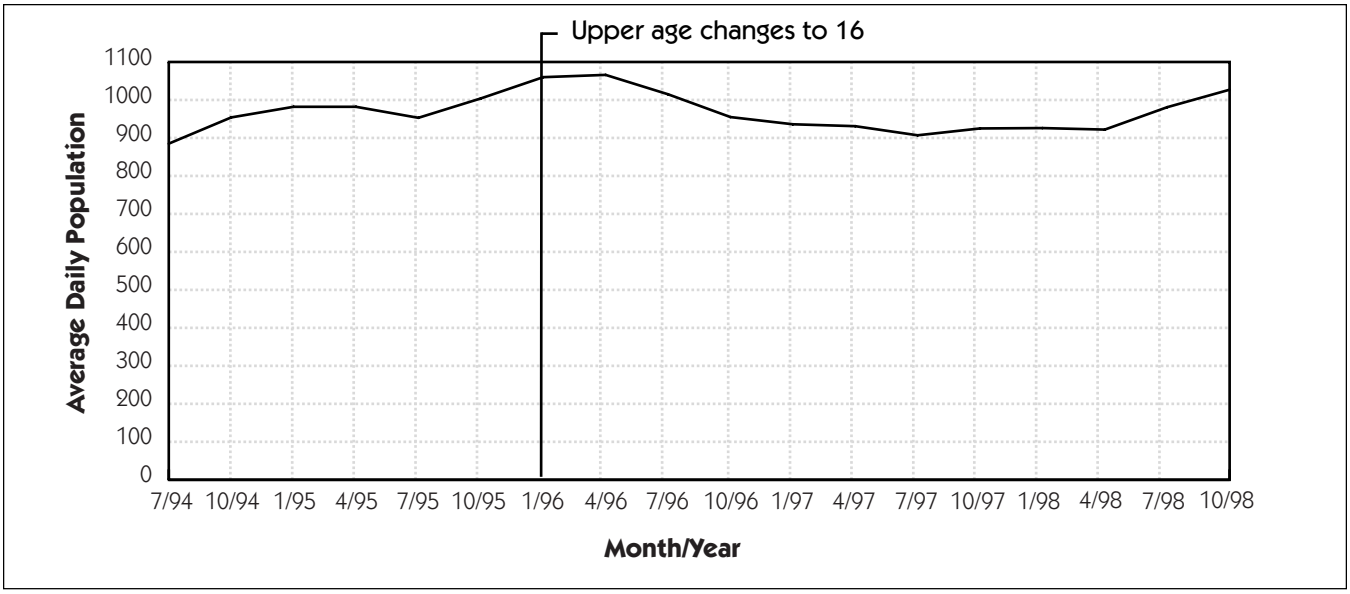
Jails

County jails were among the first institutions in Wisconsin's criminal justice system to feel the impact of the lower age of criminal responsibility. The number of jail admissions in Wisconsin almost doubled between 1988 and 1997. In 1996, overall jail admissions increased by 5 percent, and between 1996 and 1997, they jumped almost 10 percent. Respondents believed that the additional 17-year-olds in the criminal system contributed to the increase. The Wisconsin Office of Justice Assistance estimated that 5,750 17-year-olds were admitted to county jails in 1996 and 8,125 (or 3 percent of total jail admissions) were admitted in 1997, a 41-percent increase. The proportion of minors in the Milwaukee County Jail grew from less than 1 percent of the average daily population before the change to almost 5 percent of the average daily population in 1997. (See sidebar: "Minors in the Milwaukee County Jail," page 13.)

Prisons

In recent years, the number of inmates in the Nation's adult prisons who are younger than age 18 has expanded rapidly. A survey of State corrections departments suggests that the under-18 prison population nationwide grew 22 percent between 1991 and 1995

Figure 3. Average Daily Population in Wisconsin's Juvenile Correctional Institutions, by Month: July 1994 to October 1998



Source: Wisconsin Department of Corrections. November 1998. *The Impact of Wisconsin's Juvenile Justice Code on Costs and Funding of the Juvenile Correctional Services: Evaluation and Recommendations.* Madison, WI: Wisconsin Department of Corrections.

and an additional 36 percent between 1995 and 1997 (Levinson and Green, 1999). Wisconsin prison admissions reflect this trend:

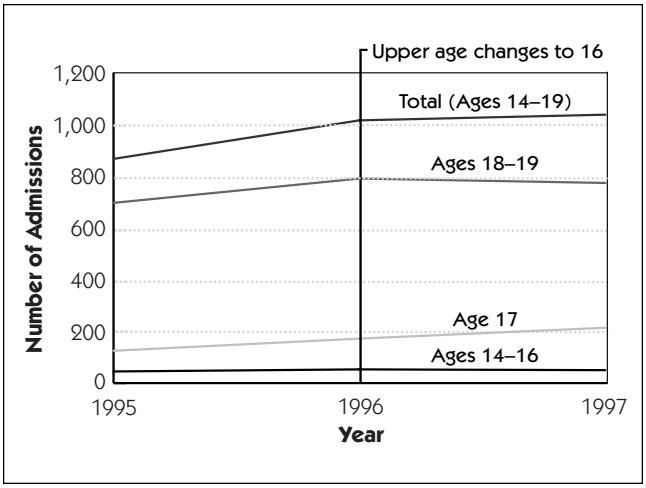
- Between 1995 and 1997, Wisconsin prison admissions of 17-year-olds (many of whom would have been placed in JCI's before the reform) grew 70 percent.
- Admissions of waived youth ages 14 to 16 increased by approximately 10 percent, as did admissions of 18- and 19-year-olds.
- Overall admissions of youth under age 20 increased by about 20 percent.
- Admissions of age groups 20 and over increased about 5 percent.

(See figure 4 for additional information.)

Impact on Policy and Programming in Jails and Prisons

Except for purposes of criminal responsibility, 17-year-olds continue to be minors under Wisconsin law. They are unable to vote, make wills, sue, enter into contracts or apply for credit in their own names, obtain medical treatment without parental consent, or be completely independent of their parents. Interviews revealed that the most immediate policy and

Figure 4. Admissions to Prison in Wisconsin, by Age at Admission, 1995–97



Source: Wisconsin Office of Justice Assistance. 1998. *Wisconsin Adult Jail Populations–1997.* Madison, WI: Wisconsin Office of Justice Assistance.

programming implications of the State's reforms centered on anomalies caused by the "in-between" status of 17-year-olds. These implications primarily affected the adult corrections system, which has assumed responsibility for a higher number of minors in its facilities and in its day-to-day work. Of the respondents from the adult corrections system, jailers were most likely to present specific examples of policy issues and programming challenges that have emerged as a direct result of lowering the age of criminal responsibility. These and other challenges are discussed in the next sections.

Education Programs

Although now burdened with adult criminal responsibility, 17-year-olds in Wisconsin remain subject to laws that mandate the education of minors. Prior to the reform, minors transferred to criminal court by judicial waiver were held in jails and remained technically subject to the State's education laws. However, because the population of jailed juveniles was so small and scattered at that time, compliance—which would have involved dedicating teachers to the jails at the local school district's expense—was often unfeasible.

Removing 17-year-olds from delinquency jurisdiction has significantly increased the daily population of minors held in jails. In three of the four study sites, this change has led to collaborative action on the part of jailers and local school districts to meet requirements for compulsory education. The three urban study sites featured classroom opportunities in the jails for a population of inmates who had been denied the service prior to the reforms (including inmates up to age 21 eligible for special education because of a disability).

Interviews with jailers and educators indicate that the culture of jails has been positively affected by these new learning opportunities. Stories of older inmates supporting and encouraging the classroom activities of younger inmates were among the brightest examples of such positive effects. One jailer noted with a smile that a younger population had helped him extend community jailing initiatives by increasing public support for additional services to inmates. In an overcrowded facility, he said, inmate services and programming not only benefited inmates, they were essential to safety and security. He, therefore, continued to welcome the arrival of 17-year-olds—even though his jail was operating at 200 inmates over capacity.

Teachers, on the other hand, expressed concerns about the curriculum requirements for jail school programs. The Department of Public Institutions, which sets policy in this area, requires that a standard high school curriculum be taught to jail inmates. According to teachers, however, the educational ability of the average jail inmate is well below that of the average high school student. In addition, because many inmates have earned few high school credits, graduation is not a realistic goal. The problem of what to teach inmates is compounded by the unpredictable duration of each inmate's stay in jail.

In addition to being entitled to education while in jail, minors are eligible for educational release. Three of the four jails studied offered educational release opportunities, subject to the same requirements governing adult jail inmates' participation in work release programs. A local law enforcement official described the educational release program as a positive adult criminal corrections system response to the special needs of the minors now under its

Minors in the Milwaukee County Jail

Statistics maintained by the Office of the Sheriff in Milwaukee County provide insight into how the change in the age of criminal responsibility has affected the jail population in the State's largest urban jurisdiction. A "snapshot" or 1-day count from the jail's daily census on December 20, 1995, just before the change took effect, shows 12 17-year-olds and 5 youth under age 17 in the jail population. On November 11, 1997, a little less than 2 years later, the daily census shows 55 17-year-olds and 2 youth under the age of 17 in the jail's population.

The jail averaged approximately 43 17-year-old inmates during 1996, the first year of the change. In 1997, the average rose to nearly 60. For most of 1998, the jail averaged approximately 55 17-year-old inmates.

supervision. Through the educational release program, opportunity is linked with tough, accountability-promoting sanctions (e.g., confinement) in the event that the opportunity is abused.

Emergency Medical Treatment Protocols

As minors, 17-year-olds require parental consent for medical treatment. Immediately after the passage of the reform legislation, adult jail and corrections officials were not sure how to proceed when minors under their supervision experienced medical emergencies. Trailer legislation passed in the same session (1995 Wis. Act 352), however, defined responsibility and provided guidance on this issue to the local systems. Essentially, the legislation allows jailers to provide appropriate medical care without obtaining the consent of a prisoner's parent, guardian, or legal custodian. In interviews, jailers and corrections officials nonetheless expressed concern about their responsibility under the law, explaining that, at the time of a juvenile's admission, they typically try to gain parental consent for any medical treatment that may later become necessary for him or her.

Interactions With Older Inmates

None of the jailers interviewed described a chronic problem with adult inmates victimizing juveniles. In fact, they typically indicated, older inmates avoided minors and lodged frequent complaints about younger inmates' noise and "horseplay." One jailer and several teachers interviewed even suggested that aggressive and provocative minors posed a threat to adult inmates—particularly considering the additional penalties that adults may face for committing a crime against a minor.

To protect adults as much as minors, some practitioners suggested classifying inmates according to age. Inmate classification systems for jails are required by law and endorsed by statewide professional corrections organizations. Although minors now may be classified as "special needs" (based on other criteria such as physical immaturity), none of the classification systems in the four study sites uses age as a classification factor.

Implications for Prosecutors

Waiver Petitions

Several interview respondents expressed concern that lowering the age of criminal responsibility would change the threshold for waiver decisions. Prosecutors and judges interviewed explained that, prior to the change, simply being 17 years old greatly increased the odds of a waiver filing. Respondents therefore worried that removing the whole population of 17-year-olds would cause the age threshold to slip down—meaning that the same number of waivers would be requested and granted and that merely being 16 could increase one's odds of being waived to criminal court.

These worries may be justified, at least in part, even though juvenile probation officials, prosecutors, and judges developed a conscious policy to resist lowering the waiver threshold. In Milwaukee County, waiver petitions involving 16-year-olds increased by 90 percent in the first year after the change (going from 76 petitions in 1995 to 144 in 1996). In 1997, an additional 111 waiver petitions involving 16-year-olds were filed in Milwaukee, bringing the rate of increase between 1995 and 1997 to 46 percent. Notwithstanding this increase, overall waiver filings in Milwaukee County decreased 67 percent during the same period (from 471 filings in 1995 to 156 in 1997). The filings for 16-year-olds, therefore, did not replace the former volume of waiver petitions involving 17-year-olds.

Deferred Prosecution for First-Time 17-Year-Old Offenders

Several respondents suggested that the primary effect of Wisconsin's reform has been to withdraw diversion opportunities from 17-year-olds who commit less serious or first-time offenses. Prior to the change, respondents explained, most 17-year-olds who were serious, violent, and chronic offenders were transferred to criminal court by judicial waiver and those who remained in the juvenile system could generally be handled informally with services. Now that the latter group has been swept into the criminal justice system, respondents explained, the same resources may not be available and those that are may not be effective for minors.

To some extent, these concerns seem to be well founded. The availability of deferred prosecution services for these offenders across the four sites was not uniform. For example, one of the urban jurisdictions lacked staff to operate a diversion program. Interviews with staff members of a deferred prosecution program in another of the urban study sites suggested that they had significant problems handling the additional workload of 17-year-olds. Because of their age, 17-year-olds may be prime candidates for diversion. Assessing these juveniles' needs and tailoring diversion services to meet them, however, are difficult and unfamiliar tasks for those unaccustomed to working with young people. Program staff indicated that many of the youth are illiterate and have trouble talking about their lives. Moreover, the youth's legal status as minors limits their employment opportunities and may sometimes block their access to services that require parental consent or cooperation.

Implications for Probation Agents and Public Defenders in the Criminal Justice System

Interviews with probation agents and public defenders in the criminal justice system focused on the many problems and pressures associated with carrying caseloads that contain a larger number of 17-year-old offenders. Many of these offenders, practitioners explained, are less mature, less employable, and more dependent on their families than their adult counterparts.

Family Issues

One of the biggest adjustments for probation agents and defenders was dealing with the influence—both positive and negative—of their clients' parents and siblings. Often, they explained, older offenders have exhausted their families' capacity to offer positive support or have grown beyond the reach of any negative family influences. In general, however, neither is true of 17-year-olds. Defenders noted that the involvement and support of parents during the court process make a big difference in helping some minor clients keep their hopes alive. Defenders and probation agents, however, also reported that parents and family members of their minor clients were much more likely to contact them regularly for information and support than the family members of older clients. Responding to these requests, in turn, requires more contact, more client advocacy, and more work for defenders and probation officers. In fact, these and similar pressures associated with serving a large number of minors have led one regional probation office to designate two specialized agents to handle caseloads of "youthful" offenders (under age 20).

When parents or guardians are missing from or uninvolved in the lives of minor clients, probation agents and defenders encounter a different set of obstacles. For example, if parental consent is necessary to access confidential information or to qualify for programs (such as exemption from compulsory school attendance for early enrollment in high school equivalency diploma (HSED) or general educational development (GED) programs), the absence or recalcitrance of a youthful offender's parents may effectively deny him or her important opportunities.

Public defenders also observed the disadvantages that minors face when trying to make bail without the support and assistance of parents or other family members. In addition, minors whose legal caretakers will not accept them in a household or sign work permits and other important documents on their behalf often have problems demonstrating means of support or otherwise functioning independently in the adult world. They must be employed to secure housing, but child labor laws limit the number of hours they can work and the types of jobs they can hold. (A 17-year-old, for example, is ineligible for jobs that require operation of a motor vehicle.) Even with gainful employment, a minor cannot enter into binding contracts—and therefore cannot lease an apartment—without a parent's cosignature.

Decisionmaking Competency

Probation agents and public defenders also suggested that 17-year-olds often fail to understand the significance of being tried in criminal court—most notably, the lifelong repercussions of a criminal record. Several respondents reported that, given a choice, minors would prefer a felony criminal conviction with a sentence of adult probation to a delinquency adjudication ordering placement in a residential facility. Such a choice, respondents explained, may result from 17-year-olds' inability to comprehend the impact that a

felony record will have on their future liberties (including their ability to work for government, own a weapon, or become licensed as a professional). They may not foresee or understand the consequences of having to disclose a criminal record on future employment or school applications. As one defender explained, bail eligibility and the promise of adult probation make the criminal justice system more attractive to 17-year-olds than the juvenile system—because these aspects may allow them to "return to the party," which is all they are focused on.

In addition to not understanding the implications of a felony record, many minors fail to appreciate crucial differences between juvenile and adult probation supervision. Respondents reported, in particular, that minors do not understand probation agents' power to revoke probation and place them in jail without a court hearing.

Conclusion

Whether or not they supported Wisconsin's reform, most criminal and juvenile justice system practitioners in the State agreed that it holds 17-year-olds more accountable for their behavior in the criminal justice system. Practitioners also view the capacity, in local and State adult corrections systems, to incarcerate youthful offenders for probation and parole violations as a way to hold offenders more accountable.

Although the change undeniably achieved the goal of consistency with neighboring States, practitioners did not generally value this aspect of the reform. Only a few practitioners suggested that having the same age of criminal responsibility in Wisconsin, Michigan, and Illinois had helped protect Wisconsin communities from youth gangs headquartered in neighboring States.

As to the goal of redirecting resources, most juvenile justice practitioners did not report a decrease in their workloads or an increase in the availability of resources for prevention services—even though delinquency petitions were down in the study sites since the change. Although 10- and 11-year-olds do not account for a high percentage of delinquency referrals, their addition to the juvenile court's jurisdiction was commonly regarded as offsetting the workload reduction resulting from the removal of 17-year-olds.

Three years after the reform's effective date, practitioners in both the criminal and juvenile justice systems have an overall negative response to the removal of 17-year-olds from the juvenile court's original jurisdiction. In the critical absence of data that analyze the criminal court's handling of 17-year-olds, critics suggested that the wholesale exclusion had merely "widened the net" for 17-year-olds who commit less serious offenses, thereby requiring more resources for diversion. In other words, prior to the change, 17-year-olds who committed serious and violent offenses were likely to go to criminal court via judicial waiver. The change, critics maintain, simply sends the less serious offenders (i.e., juveniles whose offenses were minor, not serious or violent) into the criminal justice and adult corrections systems.

Critics also noted major fiscal implications of the change for local and State corrections. A cost analysis for the transfer of workload, however, was never conducted. As a result, unanticipated consequences (such as the temporary reduction in the population at juvenile institutions and the resulting increase in per diem rates charged to counties) have somewhat frustrated goals for redirecting limited juvenile justice resources to a younger population. Critics also observed that the desire by adult correctional officials to "do something with these kids" caused extensive replication of juvenile justice-type program features, particularly in jails. In general, both juvenile justice and adult correctional practitioners have experienced considerable anxiety and frustration trying to meet the special needs of minors.

Supporters of the reform asserted that the change, by achieving the goal of increased accountability for older, maturer minors, has had a deterrent effect on crime and pointed to reductions in the volume of juvenile arrests for serious offenses as evidence of deterrence. Although the State did not widely publicize the change, supporters suggested that news of the change spread quickly in child-serving institutions such as public schools. The change also received press coverage that was easy to understand: 17-year-olds are to be treated as adults when they commit any crime.

New Mexico's Case Study[2]

The Reform: Eliminating Judicial Waiver and Giving Juvenile Court Judges the Option of Imposing Juvenile or Criminal Sanctions on Certain Offenders

Effective July 1, 1993, the New Mexico legislature revised its Children's Code (New Mexico Statutes Annotated (NMSA), chapter 32A). With respect to serious, violent crime by juveniles, three significant changes occurred: (1) elimination of the judicial waiver provision, (2) passage of a blended sentencing provision that allows juvenile court judges to impose either a juvenile or a criminal justice sanction for a new category of "youthful offender," and (3) elimination of juvenile court jurisdiction over a new category of "serious youthful offender" in favor of those cases being filed directly in criminal court.

Significance of the Reform

The most common State legislative response to serious juvenile crime in the 1990's was to streamline the machinery for trying juveniles in criminal court (through such mechanisms as judicial waiver, prosecutorial direct file, and legislative exclusion), without attending directly to the sanctions that may be imposed in cases transferred to criminal court. By essentially equipping its juvenile courts with expanded sanctioning powers in a broad range of serious cases, New Mexico has taken a different tack.

Although New Mexico is not the only State that has established a blended sentencing scheme for serious juvenile offenders, it was, as of the end of the 1997 legislative session, the only State that had empowered its juvenile court judges to choose among the widest possible range of sanctioning options (all immediately effective)—from juvenile probation up to prison sentences—for a certain class of juvenile offenders. As such, New Mexico's reform is a notable attempt to maximize the juvenile court's ability to individualize its judicial response to each offender.

Primary Goals of the Reform

Overall, reforms in New Mexico represented an effort "to treat most kids as kids," make the option of adult correctional sanctions available for older juveniles who committed more serious crimes, and select out the most serious offenders for criminal court processing. (For more information on the context of these and other reforms in New Mexico, see sidebar: "Background of the New Mexico Reform," page 18.)

The purpose of New Mexico's changes targeting serious, violent juvenile crime was threefold:

- **To eliminate the cumbersome judicial waiver provision.** The Children's Code reform task force concluded that the traditional judicial waiver hearing had become a cumbersome process that essentially subjected offenders to "a trial before the trial." Waiver hearings to determine amenability to treatment in the juvenile justice system were held at the beginning of the process, while guilt was still contested. Under the new procedure—which allows prosecutors in cases involving juveniles designated as "youthful offenders" to seek a criminal conviction and sanctions at sentencing—the amenability

[2] Dr. Larry Mays and Ms. Teri Turner contributed background information to this chapter after conducting site visits in the Third Judicial District (Dona Ana County) and the Fifth Judicial District (Chaves, Eddy, and Lea Counties), respectively. Ms. Torbet conducted site visits in the Second Judicial District (Albuquerque) and at the State level in Santa Fe. Cynthia Leyba, Children, Youth and Families Department, and Linda Crawford Freeman, Administrative Office of Courts, compiled data sets.

Background of the New Mexico Reform

The New Mexico Children's Code, first enacted in 1972, designated four categories of children over whom the Children's Court would have jurisdiction: neglected children, abused children, status offenders, and delinquents. All delinquent offenders (ages 10 through 17) were handled in the same manner, and all offenders were subject to a 2-year limit on training school commitments. The code allowed transfer to criminal court (via judicial waiver) for 16- and 17-year-olds accused of a felony and 15- to 17-year-olds accused of murder. No other transfer mechanisms were available. The judicial waiver process was used sparingly, typically with the most serious offenders. (See, for example, Mays and Gregware, 1996; Houghtalin and Mays, 1993).

During the 1990's, issues regarding what to do with juveniles who had committed serious, violent crimes were debated vigorously by media representatives, legislators, and members of the public in New Mexico. Even practitioners in the juvenile justice system recognized that the delinquency provisions of the code failed to provide an adequate response to the problem. (See Utton, 1994, for an indepth explanation of New Mexico's code revision process summarized here.) Several groups had planned to introduce legislation in the 1992 legislative session targeting violent juvenile offenders.

To avoid a potential free-for-all of contending views, the New Mexico Council on Crime and Delinquency (NMCCD) spearheaded an effort to undertake a comprehensive revision of the code and received funding from the State's Juvenile Justice Advisory Committee for the study. NMCCD is a longstanding private nonprofit organization with a mission to improve the criminal and juvenile justice systems through citizen advocacy. Because practitioners generally regarded the Council as holding liberal views, NMCCD took care to ensure that the study considered a wide range of perspectives. The Council's board, in fact, removed itself from direct participation in the study by creating a task force structure and appointing a chairman responsible for selecting members representing diverse views and backgrounds.

The task force used several tactics to elicit broad-based input from practitioners in the field, citizens, legislators, and other policymakers. The task force began by sending a questionnaire to more than 3,000 agencies, organizations, and individuals with experience in applying the Children's Code. The questionnaire asked respondents to comment on problems with the existing code and suggest ways of resolving the problems. Next, the task force held a series of meetings in which it heard from national experts, considered some of the controversial areas the task force would clearly have to address, and established a subcommittee structure. Each subcommittee was cochaired by two or more task force members, and invitations to serve on the subcommittee were issued to anyone who wanted to participate. More than 300 people volunteered and served on subcommittees that met, sometimes weekly, for approximately 1 year. Finally, the task force received further information from citizens at town meetings held in seven locations throughout the State during the spring of 1992.

A team of law students provided invaluable assistance to the task force. They were assigned to specific subcommittees and attended meetings, recorded discussions and decisions, and raised and answered legal questions. They also conducted a survey of other States' codes. Following task force and committee recommendations, the students drafted legislation and commentaries.

Subcommittee reports were presented to the full task force and became the basis for the task force's final recommendations incorporated in draft legislative proposals. As those proposals were formulated, members appeared before interim legislative committees and other groups to explain the draft legislation. An interim committee endorsed the code revision proposals, and the Speaker of the House sponsored the resulting bill. Because the bill as a whole (particularly its minimum age provisions for serious and youthful offenders) was in some respects controversial, its unanimous endorsement by the task force was crucial to its eventual passage.

decision is moved from the pretrial stage to the sentencing stage, after guilt has been established.

- **To create sentencing options for a new class of "youthful offenders."** The Children's Court has exclusive jurisdiction over a new category of youthful offenders—essentially the group of offenders previously eligible for waiver. Under the new provision, youthful offenders were initially defined as 15- to 17-year-olds charged with one of the following offenses:

  - Second-degree murder, assault with intent to commit felony, kidnaping, aggravated battery, shooting at an occupied building, dangerous use of explosives, criminal sexual penetration, robbery, aggravated burglary, or aggravated arson.
  - First-degree murder (15-year-olds only).
  - Any felony and three prior separate felony adjudications during a 2-year period.

  Subsequent changes to the law added crimes to the definition of youthful offender—including aggravated battery on a peace officer (added in 1995) or a child (added in 1996) that resulted in great bodily harm or death. In 1996, the age limit for eligibility as a youthful offender was lowered from 15 to 14 years of age for all offenses.

  Under the provision, a Children's Court judge may enter an adjudication of delinquency and sentence a youthful offender found to have committed one of the enumerated offenses to an appropriate juvenile sanction. Alternatively, where the prosecutor has filed a notice of intent to seek a criminal sanction before trial and, after adjudication, the Children's Court judge has made a series of statutory amenability findings required to invoke a criminal sentence (and conviction), the juvenile can receive an adult criminal corrections sanction.

- **To eliminate juvenile court jurisdiction over juveniles who commit first-degree murder.** Under the reform, 15- to 17-year-olds (initially 16- and 17-year-olds) charged with first-degree murder are excluded from juvenile court jurisdiction. These "serious youthful offenders" are sentenced according to the State's Criminal Sentencing Act and may receive sentences up to, but not exceeding, the mandatory term for an adult (i.e., life in prison but not death). If the alleged serious youthful offender is convicted of a lesser offense than first-degree murder, the court may impose either a juvenile or a criminal sanction.

Impact of the Changes

This section describes the impact of New Mexico's blended sentencing law on various components of the juvenile and criminal justice systems. State and local implementation issues are described first, followed by assessments of the impact on case processing, sentencing, and correctional resources.

Implementation Issues

The State conducted very little initial planning on how to implement reforms that affected the new category of "youthful offenders." Thirteen months after the law went into effect, however, the Children, Youth and Families (CYF) Department funded a study that, among other things, attempted to identify the views of judges and other justice professionals on the best system response to youthful offenders. Although their understanding of the reforms' intent varied, most study respondents believed that the legislature had wanted to target the "worst of the worst" juvenile offenders for a punishment response, thereby removing those no longer amenable to juvenile justice programs while otherwise preserving the intent of the Children's Code (Schwartz et al., 1995). Because most respondents viewed the juvenile corrections system as unprepared or inappropriate for many youthful offenders, they considered the availability of criminal sanctions an appropriate response. In keeping with this view, respondents believed that scarce resources should not be expended on new juvenile justice system programming for youthful offenders, although respondents did believe that intensive aftercare services should be required for this population. Funds should also be used for delinquency prevention and the development of other local services for youthful offenders. (See sidebar: "Profiles of Youthful Offenders and Serious Youthful Offenders," page 20.)

No New Programming

The New Mexico legislature authorized the Department of Corrections (DOC) to implement specialized

programming for youthful and serious youthful offenders in prisons. In addition, the State's Juvenile Justice Advisory Committee recommended that DOC implement specialized programs and be required to segregate youthful offenders from adult offenders in prison. DOC, however, chose to do neither because of the small number of juveniles expected to be sentenced under the new law. CYF likewise decided not to treat juveniles who had received a delinquency adjudication and sentence under the youthful offender law any differently from members of the general delinquent population in their institutions.

Because of the punitive intent of the legislation, no new or special programming for the newly created categories of youthful/serious youthful offenders was deemed necessary at the State or local levels in adult or juvenile corrections; no separate facility was initially planned in either system; no new funding was appropriated; and no training regarding the new law was conducted. The only changes in local procedure were the new filing requirement for prosecutors who wished to seek criminal sanctions and, in one site, the assignment of a social worker to help the public defender locate treatment options in the juvenile system for youthful offenders.

Impact on Case Processing

Pretrial Detention/Status

When the law went into effect, confusion existed at the local level regarding who qualified for the new classifications of youthful offender and serious youthful offender and what rules governed the categories, particularly what a juvenile's status would be during case processing. Court rules amended in 1995 clarified that (1) a youthful offender must be held in a juvenile detention facility until sentencing and (2) a serious youthful offender may not be detained in a jail unless the court finds that such detention is appropriate (Rule 10–207). Because they are under criminal court jurisdiction, serious youthful offenders whose

Profiles of Youthful Offenders and Serious Youthful Offenders

The following profile of 42 youthful offenders and serious youthful offenders incarcerated in New Mexico's prisons in July 1996—who represented almost the total population of juveniles statewide who had received a prison sentence—provides an interesting snapshot. (At the time of data collection, the serious youthful offenders were 16- and 17-year-olds charged with first-degree murder who were excluded from juvenile court jurisdiction; the youthful offenders were 15-, 16-, or 17-year-olds charged with designated serious offenses and subject to juvenile or criminal sanctions.)

- The 34 youthful offenders and 8 serious youthful offenders were predominantly 16- or 17-year-old Hispanic males who were not in school at the time of their arrest. (The only female in the group was a serious youthful offender.) The typical presenting offense for the youthful offenders was a robbery or aggravated assault that involved a firearm, other accomplices, and one victim, usually of the same ethnicity and gender as the offender.
- Individuals in both groups had diverse prior records. Their records typically included some violent, some property, and some public order offenses. However, it was the youthful offenders—not the serious youthful offenders—who had more violent and extensive juvenile criminal careers.
- The average sentence for youthful offenders was 6 years. For serious youthful offenders, it was 36 years.
- Youthful offenders committed significantly more infractions in prison than serious youthful offenders. Infractions arose mostly as a result of disciplinary problems rather than violent behavior problems.

Source: Hanke, P.J. September 13, 1996. *Working Paper No. 20: Profile of Youthful Offenders and Serious Youthful Offenders in New Mexico's Prisons.* Albuquerque, NM: Institute for Social Research, University of New Mexico.

behavior in a juvenile detention facility is found to be disruptive or unmanageable may be transferred to jail on the orders of a judge.

Detention administrators reported longer stays in detention for youthful offenders than for delinquents. It is unclear whether such delays are caused by youthful offenders' more frequent requests for jury trials or by activities associated with the sentencing of youthful offenders (e.g., psychological evaluations, predisposition reports, amenability hearings). Because of longer periods of time spent in detention (both before and after trial), administrators regard the lack of programming for juveniles in detention as a growing concern.

Intake and Petitioning

Juvenile probation officers and district attorneys expressed concerns about the intake and petitioning process for youthful offenders. By statute, the probation department is responsible for conducting a preliminary inquiry (PI) into all delinquency referrals to determine the best interests of the child and the public. Statements made to a probation officer during a PI are shielded by confidentiality requirements at intake, and the results of the inquiry are not admissible until the amenability-to-treatment hearing—which now occurs after the trial, when only the question of appropriate sanctions remains.

When PI's were conducted to inform juvenile court judges' waiver decisions, they were as broad as possible. In the new youthful offender cases, however, the PI serves the more limited purpose of helping prosecutors determine whether or not to seek criminal sanctions. Respondents indicated that some form of pre-petition PI is clearly necessary, both because district attorneys rely on probation's recommendations in this area and because probation's help is needed in identifying chronic offenders (i.e., those who qualify as youthful offenders under the three-prior-adjudications criterion). Most respondents, however, reported that conducting full-scale PI's at the front end has slowed the process unnecessarily.

Decision To Seek Criminal Sanctions

The district attorney makes the initial decision to seek a criminal sanction in cases involving youthful offenders. If a delinquency referral meets age, offense, and/or prior record criteria specified in the youthful offender law, the prosecutor may seek a criminal sanction, in which case he or she must file a notice of intent within 10 days of filing the delinquency petition. Some respondents pointed out that, without statewide reporting, it is difficult to determine whether an accused juvenile qualifies as a chronic offender (i.e., one who has three prior felony adjudications within 2 years).

Prosecutors deciding whether to seek criminal sanctions against a youthful offender will typically consider the juvenile's age, court record, prior offenses, and previous treatment opportunities and the seriousness of the offense, its impact on the victim, and the recommendation of the probation officer. Although considerable prosecutorial discretion exists at this point in the process, most respondents indicated that the blended sentencing statute provides a reasonable check on that discretion. Nevertheless, significant variations in approach were found in the districts visited. In the one rural district studied, for example, the prosecutor seeks criminal sanctions against all juveniles who meet youthful offender criteria. (To date, however, the office has not received many qualifying referrals.) Another district attorney's office has a specific policy of not seeking criminal sanctions in aggravated burglary cases unless the offender brandished a weapon or physically harmed a victim.

Statewide data were not available on the number of youthful offender cases in which prosecutors had sought criminal sanctions, but estimates put the number at 100 to 150 cases per year. In addition, no statewide data exist on the number of youthful offender cases handled as delinquency cases (i.e., those in which no criminal sanction was sought). The prosecutor in one urban district estimated that he had sought criminal sanctions in 70 to 80 cases per year and rejected that option in two to three times as many eligible youthful offender cases.

Additional Rights for Youthful Offenders

Because blended sentencing options expose juveniles to the risk of criminal sanctions, the trial of a youthful offender features essentially the same constitutional protections guaranteed in criminal trials. (In New Mexico, Children's Courts are courts of general trial

jurisdiction, and their judges may preside over criminal trials.) After a prosecutor files a notice of intent to seek a criminal sanction, in fact, the juvenile petition is closed and the rules of criminal procedure apply. The youthful offender (like all juveniles who appear in court) is represented by an attorney. A preliminary hearing (before the court or a grand jury) takes place within 10 days of the notice, and any youthful offender being detained before trial is eligible for bail. Youthful offenders also have a right to a trial by a jury of 12 persons. (A 6-person jury decides ordinary juvenile delinquency matters.)

Plea Bargaining

Most respondents reported that the reform has resulted in prosecutors using the threat of an adult criminal sanction as a "negotiating chip" to obtain pleas that guarantee juvenile sanctions. As a result, respondents reported, most youthful offender cases do not go to trial. Plea bargaining policy is often caseload driven: If a district attorney's office does not have the resources to try a case, it has a greater incentive to plea bargain. In all instances of plea agreements, a judge discusses the plea being offered with the juvenile to ensure that he or she has agreed to its terms voluntarily and understands the outcome.

Case Delays

For a variety of reasons, cases in which the youthful offender law is invoked are likely to take far longer than ordinary delinquency adjudications. Reasons for the delay include additional time spent on discovery, the frequent filing of defense motions contesting competency to stand trial, and defendants' additional procedural rights under the new law, including the right to a full-dress (12-person) jury trial. In addition, prosecutors may request deadline extensions as part of strategies being used in plea negotiations.

Criminal processing time standards also differ from juvenile justice system standards. Criminal trials must commence within 6 months of arraignment; delinquency adjudicatory hearings must occur within 4 months of petition. Court data from the New Mexico Second Judicial District (Albuquerque) revealed that 65 percent of youthful offender cases in which a criminal sanction was sought received a sentence within 9 months of indictment.

Impact on Sentencing

The purpose of blended sentencing is to give judges options for fashioning dispositions that are more offender based, that is, dispositions that take into account not just the current offense but the offender's background, characteristics, and prospects for rehabilitation. Blended sentencing models in which the juvenile court retains jurisdiction are intended to increase the likelihood that significant consequences will follow from juvenile wrongdoing and encourage offenders to access the opportunities available to them in the juvenile justice system. (For more information on blended sentencing, see Zimring, 1998; and Redding and Howell, in press.)

As discussed above, one effect of New Mexico's elimination of its judicial waiver provision was to move the amenability decision from the pretrial stage to the sentencing stage. Under blended sentencing, in fact, the sentencing phase looks very much like the old judicial waiver process (see NMSA sec. 32–2–20). The judge typically orders a psychological evaluation prior to the amenability hearing. (Because guilt has already been established, the juvenile is permitted to talk about the crime with a psychologist—something that never would have occurred when the amenability hearing occurred before fact-finding and that gives the judge access to all relevant information on the offense and the offender.) The evaluation and subsequent hearing focus on several factors, including the youthful offender's history of previous treatments, his or her prospects for future rehabilitation within available juvenile facilities, and any developmental disabilities or mental disorders that might disqualify him or her from commitment to a juvenile facility.

The judge is required to consider a number of other determinative factors when assessing amenability. These factors, which are specified by statute, are roughly the same as those that the U.S. Supreme Court's decision in *Kent* v. *United States,* 383 U.S. 541, 566–67 (1966) requires courts to consider when making judicial waiver determinations. They include the following:

- The seriousness of the offense.
- Whether the offense was committed in an aggressive, violent, premeditated, or willful manner.
- Whether a firearm was used.

- Whether the offense was committed against persons or property, with greater weight given to person offenses, especially if injury resulted.
- The juvenile's sophistication and maturity (as reflected by his or her home environment, emotional attitude, and pattern of living).
- The juvenile's record and previous history.
- The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation by using procedures, services, and facilities currently available.
- Any other relevant factor, provided that it is stated on the record.

As noted above, New Mexico's blended sentencing statute allows Children's Court judges to impose juvenile or criminal sanctions—provided that the prosecutor has filed a notice of intent to seek the criminal sanction. If the judge at the amenability hearing decides that juvenile sanctions should be applied, the juvenile probation department prepares a predisposition report. If criminal sanctions are to be applied, the adult probation department completes the report. If the judge is undecided, an additional evaluation may be requested to focus on the juvenile's treatment needs and level of "dangerousness" (i.e., whether the juvenile can be treated safely on probation and, if not, what level of security he or she requires).

Youthful Offender Outcomes

Case processing and sentencing data compiled on youthful offender cases in which the district attorney's office in the Second Judicial District (Albuquerque) sought criminal sanctions provide a glimpse of how one locality is applying New Mexico's blended sentencing law. Between January 1995 and November 1998, 211 youthful offender cases (primarily Hispanic males) were indicted by the grand jury. Of these, 26 cases were still pending at the end of 1998 and 19 had missing information.

In the 166 completed cases, 139 were convicted and 27 were otherwise dismissed.

- Of the 139 convicted, 104 entered a guilty plea or were convicted of a youthful offense, 34 were convicted of or admitted to a lesser offense and received a juvenile sentence, and 1 received another type of formal outcome.
- Of the 104 convicted of a youthful offense, about half (53) received a criminal sanction and 51 received a juvenile sanction.
- Of the 53 who received a criminal sanction, only 5 received a "straight prison sentence" (i.e., one for which none of the sentence was suspended). Twenty-two received a prison sentence (all or some of which was suspended), 24 were placed on adult probation with or without a suspended sentence, and 2 received jail and a suspended sentence or parole.
- Of the 51 who received a juvenile sanction, 32 were placed on probation, 18 were committed to CYF, and 1 received both a juvenile commitment and probation (see figure 5, page 24).

Data from the other two study sites provide interesting comparisons with the Second Judicial District's sentencing decisions. In the other urban site (Las Cruces), all but 1 of the 15 youthful offender cases indicted during a 2-year period received a juvenile sanction. (Ten received probation, three were committed to CYF, and one received both a juvenile commitment and probation.) The sole criminal-sanctioned case received a suspended sentence with parole. In the rural district, of the six offenders indicted during a 1-year period, four received prison sentences and two were placed on juvenile probation.

Although suspended sentences, parole time, and time-served computations made it difficult to calculate the exact length of adult sentences received, an offender's chances of receiving a 9-year or longer prison sentence were greater in the rural district than in the other two districts.

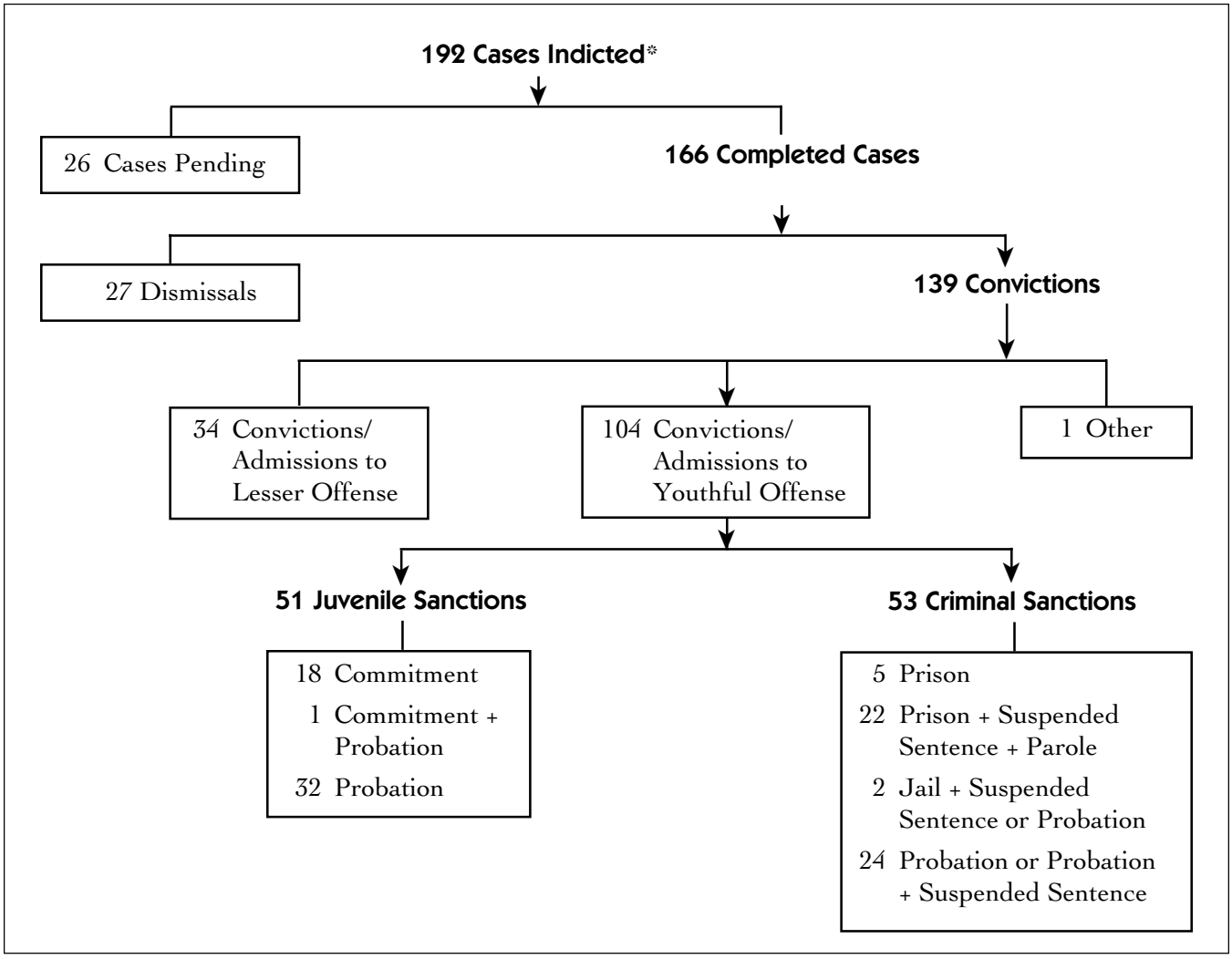
What the data do not reflect is the number of cases eligible for youthful offender designation for which the district attorney did not seek an adult sanction. These cases, handled as delinquency cases, are not tracked. The district attorney handling juvenile cases in the Second Judicial District estimates that two to three times more youthful offender cases in that district are handled as juvenile cases than actually receive a notice of intent to seek an adult sanction. Information on exactly how many cases are handled

in this manner would provide valuable insight into the types of cases for which the district attorney seeks adult sanctions, as compared with the number of potentially eligible cases being handled as regular delinquency cases, both within and across jurisdictions.

Impact on Correctional Resources

Respondents indicated that sentencing decisions may be based as much on the availability of correctional resources as on the appropriateness of a given sanction. Judges reported that even in cases in which youthful offenders are amenable to juvenile sanctions, the current State-administered juvenile corrections system often lacks the resources to hold offenders accountable or address their needs. Public defenders noted that consideration of "the prospects for adequate protection and rehabilitation in available facilities" (among the amenability criteria listed above) often works unfairly against their older clients, for whom judges tend to impose criminal sanctions based on the unavailability of treatment.

Figure 5. Processing of 192 Youthful Offender Cases Indicted Between January 12, 1995, and November 5, 1998, in the Second Judicial District (Albuquerque, New Mexico)



* Indicted refers to those youthful offender cases in which the district attorney sought criminal sanctions. An additional 19 cases had missing information.

If a court decides on a juvenile sanction, it may impose any of the full range of dispositional options available to delinquents. Unless a juvenile is discharged from the system sooner, a juvenile sanction may continue for 2 years or until the juvenile reaches age 21 (whichever results in a longer sanction). A juvenile sentence may be less, but not more, severe than the criminal sentence for the same offense.

Several Children's Court judges reported being unfamiliar with criminal sanctions at the time the blended sentencing law was enacted. Criminal sanctions include jail, prison, probation, parole, and suspended sentence. As stated above, a juvenile may receive a sentence that is less, but not more, severe than the mandatory criminal sentence, with 1- to 2-year enhancements available for crimes that were committed with firearms or that involved elderly or handicapped victims. Counties operate local jails and juvenile detention facilities, and DOC administers adult probation and parole services in district offices throughout the State. Prisons are also administered by DOC and have a current population of approximately 4,600 males and 500 females.

Lack of Confidence in the State's Juvenile Corrections System

Prior to the 1993 revision of the Children's Code, the Administrative Office of the Courts administered juvenile intake and probation services at the district court level and the New Mexico Youth Authority administered juvenile corrections. To consolidate all services for children—including child protection and juvenile justice services—within a single agency, the recent reform initiative abolished the Youth Authority and created the Children, Youth and Families (CYF) Department.

Many respondents expressed dissatisfaction with the new agency's programming for delinquents and for youthful offenders receiving juvenile dispositions. The intent of combining social services and juvenile justice in a single agency was to provide better and more coordinated services. However, in the view of many respondents, the organizational structure that has evolved is unworkable. Practitioners pointed to basic conflicts between the child protection and juvenile justice philosophies, contending that the former is firmly in administrative control. The prevailing sentiment is that the new agency's juvenile justice components (probation, parole, and institutions) receive little attention, occupy a low priority, and are administered poorly.

CYF's Division of Juvenile Justice (DJJ) administers the Boys and Girls Schools (neither of which is secure), the Youth Development and Diagnostic Center, and a recently opened 96-bed secure facility for older felony delinquents—for a total capacity of approximately 500 beds. A secure facility for the southern counties (which will include 50–60 institutional beds and 50 regional detention beds) is being planned. DJJ administers juvenile probation services in district offices throughout the State, some of which reportedly have developed special programs and services. DJJ does not provide aftercare services and prohibits out-of-State placement of juvenile delinquents.

Some judges reported that their lack of confidence in CYF is so significant that they have sentenced youthful offenders to prison or adult probation in the belief that the offenders would be more likely to receive appropriate services through the criminal justice system than through CYF. Judges are also seeking approval to send juveniles out of State to avoid what they perceive to be the negative consequences of in-State custody.

Added Burdens on Adult Probation

Adult probation departments may be experiencing the greatest impact from the new blended sentencing law. First of all, they must complete presentence reports on all youthful offenders receiving criminal sanctions and present those reports in court. Probation officers also find themselves working with a new and unfamiliar class of probationers—who may not be old enough to drive, sign a lease, find suitable employment, or make decisions independent of their families. It is standard practice for judges to suspend up to half of any youthful offender sentence in the criminal justice system and to require that the remainder of the sentence be spent on probation. Judges also typically stipulate a parole period of 2 or more years for these offenders. Adult probation officers report that youthful offenders, unaccustomed to the criminal justice system's strict reporting

requirements, often violate the terms of their probation or parole. Such a violation is the mechanism that usually revokes youthful offenders' probation or parole and sends them back to the DOC to serve their full term. Because of these and other unfamiliar new pressures on adult probation officers, at least one district now handpicks probation officers to specialize in youthful offender cases.

Conclusion

New Mexico's 1993 reforms preserved the original rehabilitative intent of the Children's Code for the majority of juvenile delinquents while targeting older juvenile offenders who have committed serious crimes to receive certain or potential adult criminal corrections responses. The State accomplished these reforms by repealing its judicial waiver law (joining Connecticut and Massachusetts as the only States to do so in the 1990's), giving juvenile court judges the option of imposing juvenile or criminal sanctions on a certain class of offenders, and excluding 15-, 16-, and 17-year-olds charged with first-degree murder from the juvenile court's jurisdiction. Despite initial startup problems (resulting, in part, from insufficient planning and lack of new programming) and certain unanticipated outcomes (including variable use of the youthful offender designation across counties), prosecutors and judges are generally satisfied with the discretion they have been given to make individualized case decisions that hold juvenile offenders accountable for serious acts. Five years after the law was passed, they reported no sense of nostalgia for the State's previous judicial waiver law.

The drawback of New Mexico's reforms results from the State's lack of a clear vision or strategy for correctional programming for youthful offenders (or delinquents, for that matter). Most practitioners interviewed believed that the juvenile corrections system was unprepared or inappropriate for many of these offenders. In two of the three districts studied, however, most juveniles eligible for youthful offender designation are being handled as delinquents or are receiving juvenile sanctions under plea negotiations or a judge's order. For public defenders, the lack of viable options hampers clients whose "prospects for adequate public safety and likelihood of rehabilitation cannot be met in available juvenile justice facilities" (one of the sentencing criteria that judges must consider under blended sentencing). Another limitation relates to the State's lack of purposeful data collection for examining designation and sentencing decisions and outcomes. New Mexico's blended sentencing statute would benefit from a closer examination of how State-administered juvenile justice services are being delivered.

Minnesota's Case Study[3]

The Reform: Giving Juvenile Court Judges the Option of Imposing Both a Juvenile and a Criminal Sanction for Designated Juvenile Offenders

In 1994, at a time when many other States were decreasing their juvenile courts' authority, the Minnesota Legislature expanded the authority of its juvenile courts. The new law, Extended Jurisdiction Juvenile Prosecutions, M.S. 260B.130, created the "extended jurisdiction juvenile" (EJJ) category of serious or repeat juvenile offenders, authorized juvenile court judges to impose both a juvenile disposition and a stayed sentence to the adult criminal corrections system, and extended the juvenile court's jurisdiction to age 21.

Significance of the Reform

Juvenile codes have traditionally provided juvenile court judges an array of disposition options to apply after a determination of delinquency, based on their discretion regarding the best interests of the juvenile. Trial and sentencing in the criminal justice system, however, have been considered necessary for certain juvenile offenders judged to be dangerous and irredeemable. In 1994, Minnesota created a third sentencing option, an alternative that allows the juvenile court to impose a sanction involving the juvenile and criminal justice systems—with the latter sanction becoming effective only if the juvenile fails to meet the conditions of the juvenile disposition. The new option serves as a last chance at success in the juvenile system—an offer of help, coupled with insistence on accountability (Minnesota Supreme Court, 1994).

Primary Goals of the Reform

By creating expanded or blended sentencing authority, Minnesota's new law enabled juvenile courts to address the treatment needs of young offenders while simultaneously considering public safety. Authors of the EJJ legislation chose as their target population serious and/or repeat offenders who would benefit from "one last chance." (See sidebar: "Background of Minnesota's Reform," page 28.)

The purpose of the law was threefold:

- **To provide a compromise.** The EJJ legislation represented a compromise between those who wanted a more punitive response to juvenile crime (for example, lowering the age of juvenile court jurisdiction or providing for automatic transfer of some juveniles to criminal court) and those who wanted to maintain traditional juvenile justice principles (that is, to provide individualized dispositions with a focus on treatment and rehabilitation).
- **To create sentencing options for a new category of "extended jurisdiction juvenile."** As stated above, Minnesota's law created a category of EJJ youth, who receive a blended juvenile/criminal sentence and are held in the juvenile court's extended jurisdiction until age 21. Depending on their ages, the crimes with which they are charged, and their past criminal histories, juveniles may receive EJJ designation in any of four ways:
  - **Prosecutor designation:** When a juvenile between ages 16 and 17 is charged with a "presumptive commit offense."

[3] Dr. Lynn Ryan MacKenzie and Douglas Thomas conducted site visits, interviews, and focus groups for this chapter in the Fourth, Seventh, and Ninth Judicial Districts of Minnesota and at the State level in St. Paul.

- **EJJ motion:** When a juvenile age 14 through 17 is charged with a felony and the prosecution provides clear and convincing evidence that an EJJ disposition would serve the public safety.[4]
- **Failed certification motion (mandatory):** When a juvenile is charged with an offense for which certification and transfer to criminal court is presumed and the court declines to certify, the case automatically becomes an EJJ prosecution.
- **Failed certification motion (discretionary):** When a juvenile is charged with an offense for which certification is not presumed and the court declines to certify, the case may proceed either as a regular delinquency case or, if the prosecution proves by clear and convincing evidence that the public safety would be served thereby, as an EJJ case (Metzen and Rolfson, 1995).

See figure 6A, "Minnesota Direct EJJ Designation," and figure 6B, "Minnesota Indirect EJJ Designation (via Failed Certification)," pages 30 and 31, respectively.

- **To provide a framework for enhancements to the juvenile justice system.** Crafters of the EJJ legislation recognized the need to expand resources and programming for this population through a subsidy to counties for delivering or purchasing services for each EJJ-designated youth.

Impact of the Changes

Policy Development and Planning

Interviewees—particularly those in areas far removed from the capital region—reported some confusion about the overall intent of the legislation. Some believed that the law's intent was to move more juveniles into the criminal justice system and have acted accordingly. Others recognized an opportunity under the law to develop resources in the juvenile justice system.

Confusion regarding the law's intent may have resulted from a lack of training on the legislation. The only State-level training regarding the EJJ legislation was provided to judges at the time the legislation was passed. State-level professional associations were slow to provide training and technical assistance to their members. Interviewees reported that, without training, people's thinking did not change. As a result, there appears to be a wide degree of disparity in how

Background of Minnesota's Reform

In 1992, the Minnesota legislature convened the Minnesota Supreme Court Advisory Task Force on the Juvenile Justice System (the Task Force) to frame a response to escalating crime by youth in the State. Public pressure to "get tough" on juvenile crime was motivated in part by a series of drive-by shootings and the gang-related shooting of a police officer in Minneapolis. According to one observer, "The confluence of Minnesota's changing racial composition, increasing poverty and urban concentration of minority young people, disproportionate minority involvement in serious youth violence, and demographic projections of more poor and minority urban youths in the decade to come, provided an additional backdrop" to the push for reform (Feld, 1995).

Several previous working groups in Minnesota had written reports that did not result in legislative change. In this case, however, the Task Force was determined not simply to write another report. It wanted to create the framework for new legislation—both by developing clear reform recommendations and by helping to build the political consensus necessary to make the reforms a reality. Although members of the Task Force attempted to involve stakeholders throughout the juvenile justice system in the reform process, respondents across the State believed that it was mainly a concern about urban crime that drove development of the legislation. According to practitioners from rural communities, which make up the bulk of the State, the legislation failed to address the justice issues they were facing such as the lack of access to needed treatment programs and aftercare services.

[4] Public safety is determined by consideration of the seriousness of the offense, the culpability of the juvenile, the prior record of delinquency, the juvenile's willingness to participate in treatment, the adequacy of treatment services available in the juvenile justice system, and the dispositional options available to the judge. In considering public safety, the court must give greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency than to other factors.

the legislation has been interpreted in different jurisdictions. Some believed that if a multidisciplinary group had headed up implementation of the law, the philosophy underlying the EJJ legislation could have been transmitted into the system more directly.

Development of State and local policy and procedure relating to the new law also lagged behind its immediate implementation. Because there was no statewide training, policy and procedure have developed locally within various organizations (for example, in police departments, prosecutor's offices, and detention centers). Respondents reported that the adversarial nature of the judicial system appears to have made it difficult to undertake collaborative planning between system players in some communities. Planning, programs, and responses were often developed in isolation, which has led to variation across the State with regard to EJJ implementation (such as who qualifies, how funds are used, what range of services are available, and what the standards of revocation are). Some observers see this variation as a problem; others believe that policy and program development at the local level is appropriate.

Despite the lack of coordinated statewide planning, local policy and practice concerning the new legislation have evolved. For example, each local prosecutor's office has developed protocols (formal or informal) on how to handle serious juvenile cases; police are reportedly investigating major offenses with an eye to EJJ prosecution and, in metropolitan areas, have developed separate divisions for handling juvenile suspects; and correctional facilities and detention centers across the State have adapted to handling a broader age range of youth.

Funding Issues

Crafters of the EJJ legislation recognized the need to fund systemic resources to make the new legislation work. However, because the legislation was passed in a nonfunding year, a 1-year gap existed before allocations could be made for additional probation officers, new pilot programs, and evaluations of current programs. Although the Community Corrections Act made $20 million in capital funding available to develop local secure beds in the 10 judicial districts, funding for direct services was not approved until 1 year after implementation of the EJJ law. At that time, the legislature approved subsidy funding for counties to support programming for EJJ offenders. DOC administers this funding ($7,815 per EJJ offender, as discussed below).

Many interviewees identified the 1-year lag between passage of the legislation and initiation of program funding from the State as a problem, particularly because communities were not notified that funding was coming. Practitioners suggested that the lag time could have been better used if localities had anticipated the funding. In fact, most practitioners did not find out about the EJJ subsidy until it was actually available, which further delayed program development.

Funding for services to be provided to EJJ-designated youth is allocated on a per-case basis. The jurisdiction develops a service plan for each EJJ youth and then receives $7,815 with which to deliver and/or purchase the services specified by that plan. At the end of the first year, this amount was increased significantly, reportedly because far fewer EJJ youth had been designated than the State had expected. Although designating youth as EJJ could be seen as a means of drawing down State resources that would otherwise not be available, focus group participants explained that this "soft money" had associated costs—such as the cost of psychological assessments and aftercare supervision—that discourage local jurisdictions from using EJJ designation to secure funds.

Impact on Case Processing

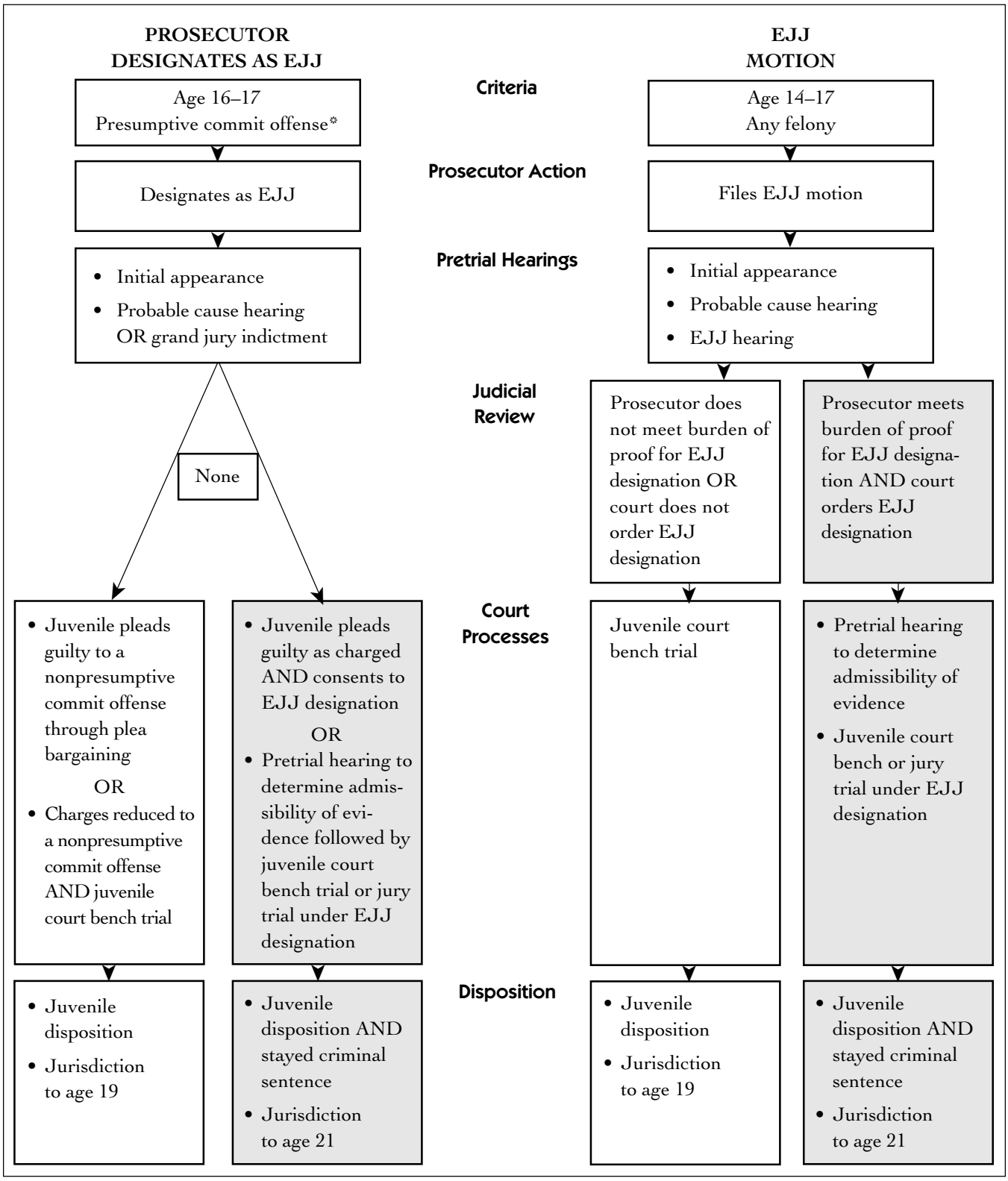
Unanticipated EJJ Designation Issues

Focus group discussions revealed significant variations in the way that the EJJ law is being used at the local level across Minnesota. Most notably, the EJJ designation—which relies partly on local community standards in defining what constitutes a serious offense—is reportedly used in urban jurisdictions only when serious person offenses are involved. In some rural areas, on the other hand, youth are being certified EJJ for property crimes. Other communities are not using the EJJ designation at all. (See sidebar: "Community Standards and EJJ Implementation," page 32.)

In addition to these designation disparities, the profile of youth receiving EJJ designations appears much different from what the legislature anticipated.

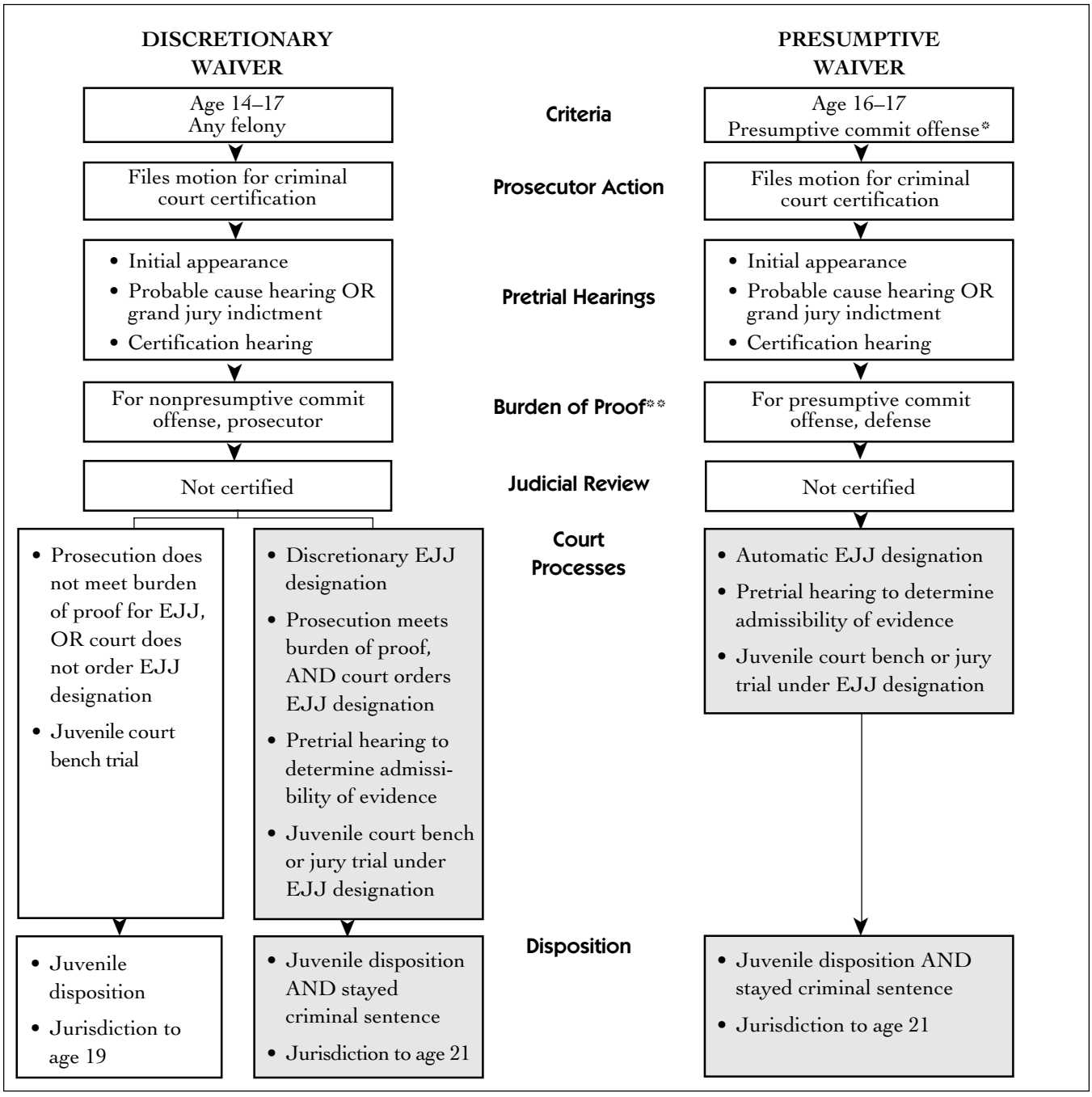
continued on page 36

Figure 6A. Minnesota Direct EJJ Designation



Note: Gray shading indicates EJJ designation.

Figure 6B. Minnesota Indirect EJJ Designation (via Failed Certification)



* **A presumptive commit offense** is a crime for which there is a mandatory minimum sentence under the Adult Minnesota Sentencing Guidelines. In relation to EJJ designation, presumptive commit offenses are: first-degree murder (14- and 15-year-olds only); second- and third-degree murder; assault in the first, second, or third degree; burglary; kidnaping; false imprisonment; manslaughter in the first or second degree; aggravated robbery; simple robbery; first-degree or aggravated first-degree witness tampering; criminal sexual conduct; escape from custody; arson in the first, second, or third degree; drive-by shooting; harassment and stalking; possession or other unlawful use of a firearm. **Offenses excluded from juvenile jurisdiction** (including EJJ designation) are: first-degree murder, 16- and 17-year-olds only, and juveniles who have previously been convicted in criminal court and are charged with a new felony offense.

** **Burden of proof** requires clear and convincing evidence that proceeding as EJJ would serve public safety, with emphasis on the seriousness of the alleged offense and the juvenile's prior record of delinquency.

Community Standards and EJJ Implementation

Implementation of Minnesota's new EJJ legislation varies widely by jurisdiction. The development of local policy and practice appears to be greatly influenced by local community standards, as the following data indicate.

Juvenile Felony Rates Vary Across the State, and Some Judicial Districts Use the EJJ Designation More Than Others

The white bars in figure 7 show the rate of juvenile felony cases in relation to the total juvenile population for each of Minnesota's 10 judicial districts in 1996, and the white line indicates the State juvenile felony rate average. As the graph reflects, the Ninth District had the highest rate (2.4 percent), followed by the Second, Fourth, and Sixth Districts (each with 2 percent). The State average was 1.8 percent. The First, Third, Seventh, and Tenth Districts shared the lowest rate (each with 1.5 percent).

The black bars in figure 7 represent the percentage of juvenile felony cases designated as EJJ for each of the 10 judicial districts in 1996, and the black line shows the State average. The Second (3.5 percent), Fourth (3.4 percent), and Ninth (3.2 percent) Districts had percentages above the State average of 2.4 percent. The Third District (with 1.4 percent) had the lowest rate of any judicial district in the State.

Even within judicial districts, a great deal of variation exists with respect to the rate at which juveniles are certified as EJJ. For instance, 10 of the 17 counties in the Ninth Judicial District have never certified a juvenile as EJJ, while the Ninth District is third in the State for EJJ designations (Minnesota Department of Corrections, 1997).

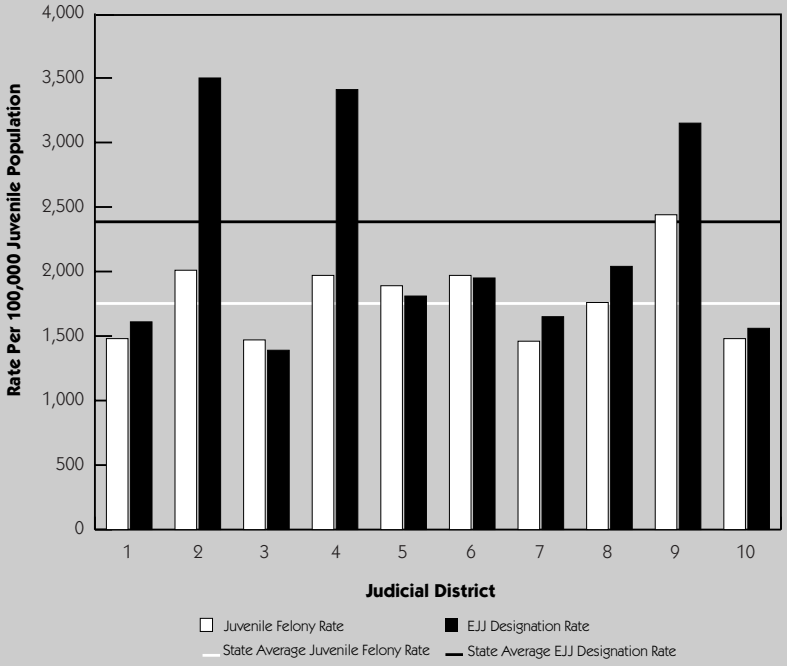
Note: Although the "black" EJJ data and the "white" juvenile felony data share the same value axis in the graph, they should not be compared with one another. The juvenile felony data are relative to the total juvenile population. The EJJ data, by contrast, are relative to the number of juvenile felony cases. The data are presented together to allow the reader to compare the practices of a given Minnesota judicial district with those of other judicial districts in the State. Figure 7 shows, for example, that the First Judicial District's juvenile felony rate is below the State average and that the rate at which it uses the EJJ designation is well below the State average. The Fifth Judicial District, on the other hand, is slightly above average in its juvenile felony rate and below the State average in its EJJ rate. The juvenile felony and EJJ rates of the Ninth Judicial District are well above average.

The Juvenile Crime Index for Judicial Districts Does Not Neatly Correlate With the Juvenile Felony Rate and EJJ Designation Rate

The white bars in figure 8 detail the juvenile arrest rate for Property Crimes (per 100,000 population) for each of the 10 judicial districts in 1996; the white line provides the State average. The black bars show the juvenile arrest rate for Person Crimes (per 100,000 population) for each of the Districts, and the black line indicates the State average.

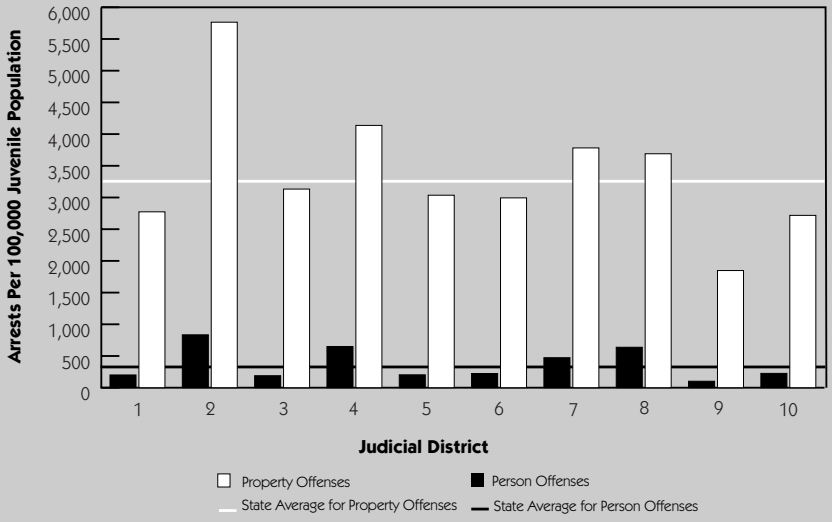
Comparing these data with the juvenile felony rates and EJJ designation rates from the previous figure reveals that the Ninth Judicial District has juvenile felony and EJJ designation rates that are well above average, yet the district's juvenile arrest rates for Person and Property Crime Index offenses are well below the State averages. The Third Judicial District, by contrast, has the lowest juvenile felony and EJJ designation rates in the State, but has near-average juvenile crime index rates. The Eighth Judicial District has near-average juvenile felony and EJJ designation rates and above-average juvenile crime index rates for both Person and Property offenses.

Figure 7. Minnesota Juvenile Felony Rates and EJJ Designation Rates, by Judicial District



Note: Read the black bars in comparison with the black line and the white bars in comparison with the white line.
Source: Poole, R., and Snyder, H. 1998. *Easy Access to FBI Arrest Statistics: 1994–1997.* Data Presentation Package. Pittsburgh, PA: National Center for Juvenile Justice (producer). Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (distributor); Minnesota Department of Corrections. 1997. *Extended Jurisdiction Juveniles in Minnesota: January 1, 1995–October 31, 1996.* St. Paul, MN: Minnesota Department of Corrections.

Figure 8. Minnesota Juvenile Arrest Rates: Person and Property Offenses



Note: Read the black bars in comparison with the black line and the white bars in comparison with the white line.
Source: Poole, R., and Snyder, H. 1998. *Easy Access to FBI Arrest Statistics: 1994–1997.* Data Presentation Package. Pittsburgh, PA: National Center for Juvenile Justice (producer). Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (distributor).

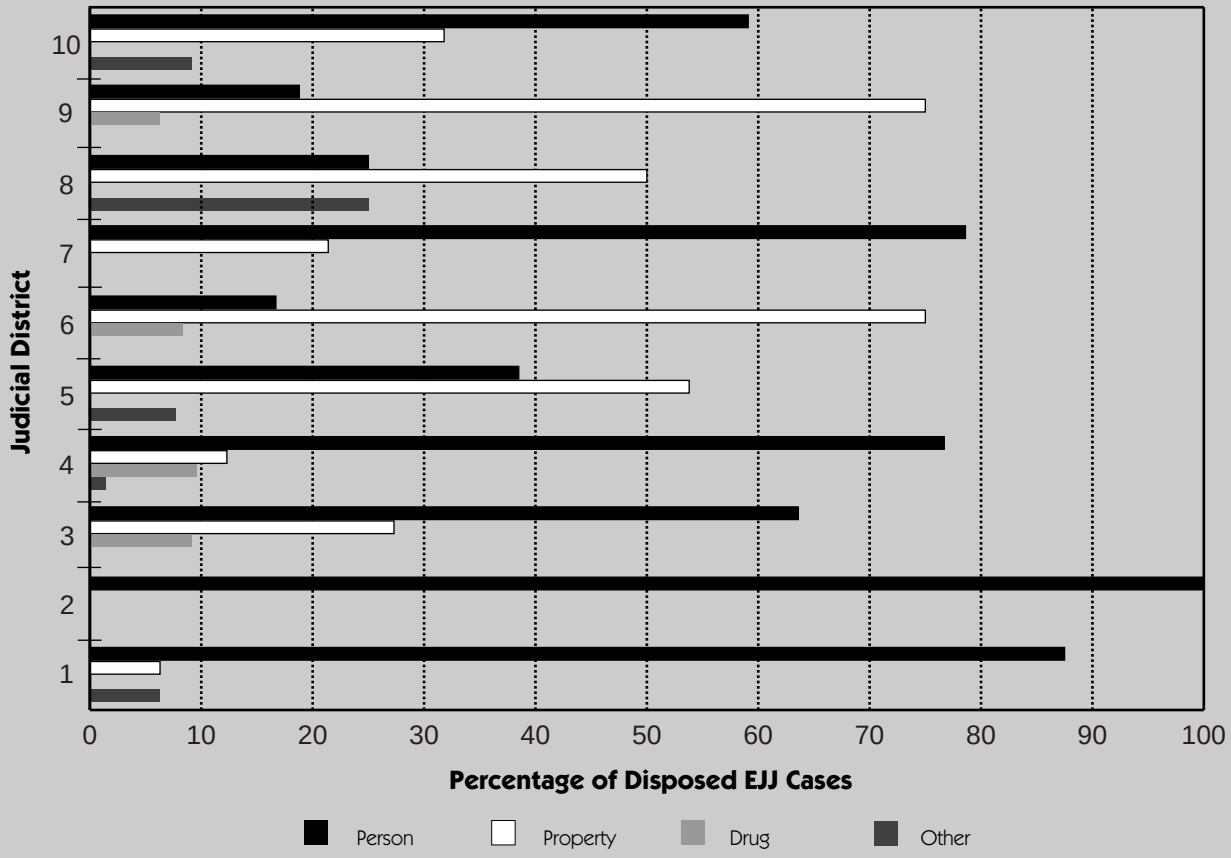
There Is Considerable Divergence in the Types of Crimes for Which Juveniles Are Designated EJJ

Figure 9 shows considerable divergence among judicial districts in the types of crimes designated as EJJ. This divergence is clear in the three districts with the highest EJJ designation rates. For example, 100 percent of the cases in the Second District (Ramsey County/metropolitan St. Paul) and 78 percent of the cases in the Fourth District (Hennepin County/metropolitan Minneapolis) were person offenses. However, in the Ninth District (17 primarily rural counties in northwestern Minnesota), only 20 percent were person offenses. Statewide, 64 percent of EJJ cases were designated for crimes against a person, 28 percent for property crimes, 5 percent for drug offenses, and 3 percent for "other" crimes (those that do not fit one of the three previous categories).

Community Standards and the Court

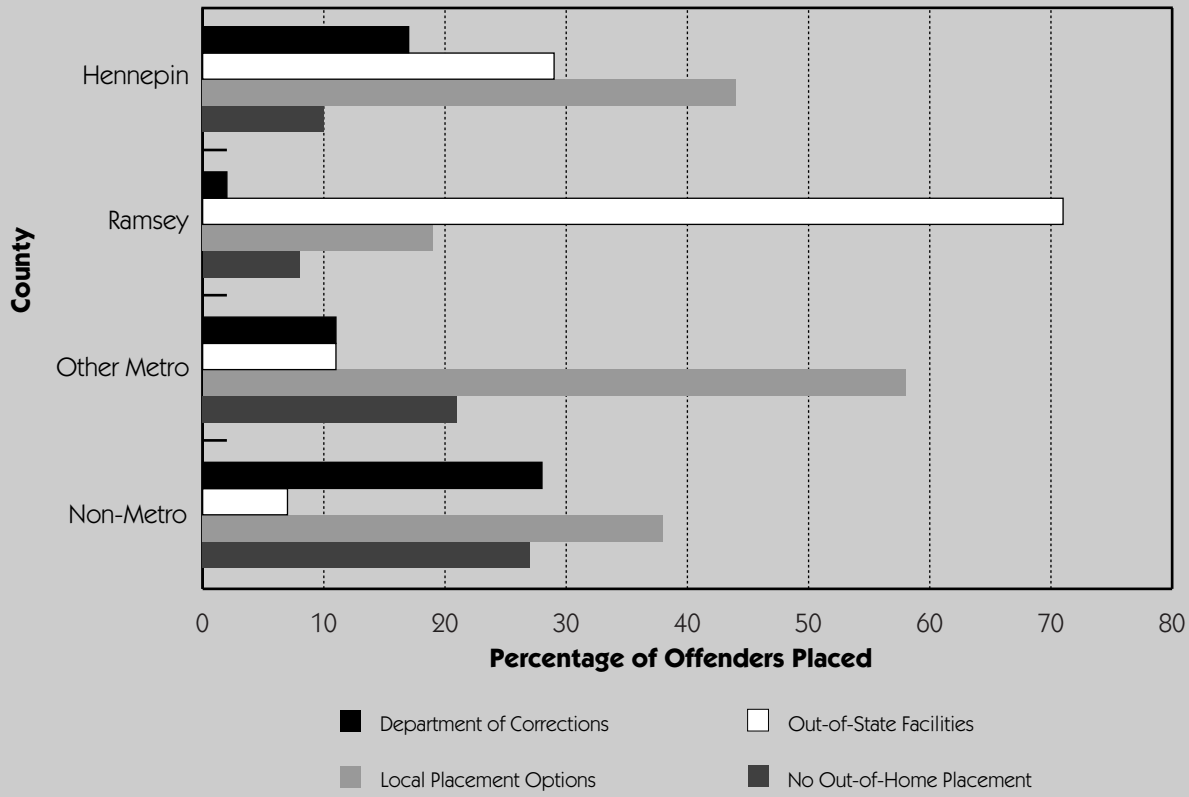
Taken together, these data confirm the view repeatedly expressed in the Minnesota focus groups: that districts vary significantly in what they consider a "serious offense" and that each court, through the policies of its prosecutors and judges, sets its own community standards, within the context of the law. (See figure 10.)

Figure 9. Offense Categories for Disposed EJJ Cases, by Minnesota Judicial District



Source: Minnesota Supreme Court. April 1998. *Statistical Highlights: 1996 Minnesota State Courts.* St. Paul, MN: Research and Information Technology Office, State Court Administration.

Figure 10. Placement Location of EJJ Offenders, by Minnesota County



Source: Minnesota Department of Corrections. 1997. *Extended Jurisdiction Juveniles in Minnesota: January 1, 1995–October 31, 1996.* St. Paul, MN: Minnesota Department of Corrections.

The data regarding placement of EJJ offenders provide further evidence of variations in the administration of the EJJ legislation. Nonmetropolitan counties (outside the Minneapolis/St. Paul region), for example, send 28 percent of EJJ offenders to Department of Corrections facilities, whereas Ramsey County/Second Judicial District sends 2 percent of EJJ offenders. Ramsey County sends 71 percent of EJJ offenders to out-of-State facilities, compared with 7 percent of nonmetropolitan EJJ offenders. Local placement options are used for the highest percentage of youth in all areas of the State, with other metropolitan ("Other Metro") counties (inside the Minneapolis/St. Paul region) having the highest local placement rate (58 percent). Nonmetropolitan counties have the highest percentage of EJJ dispositions with no out-of-home placement (27 percent).

Focus group discussions revealed that the availability of local placement options and the cost of out-of-community placements were clearly factors in the disposition of EJJ cases in both urban and rural courts. The types of offenses committed by EJJ offenders also likely play a role in placement decisions, particularly in relation to the potential risks that these youth pose to the community.

These findings confirming divergence in EJJ implementation by urban, suburban, and rural courts are not the first to reveal this type of variation among significant juvenile justice practice. Previous research on "justice by geography," however, tended to find greater formality and more severe sentences in urban jurisdictions than in rural and suburban ones (Feld, 1991). The less rigorous "snapshot" data above appear to suggest the opposite, at least with respect to EJJ designation and sentencing in Minnesota to date. Additional research into local variations in juvenile justice practice is needed.

(See sidebar: "Profile of EJJ Offenders.") Although the authors of the EJJ legislation were targeting serious and chronic young offenders, respondents reported that serious first-time offenders often are being certified as EJJ as a way to secure services for youth otherwise ineligible for services because of their age. Extension of the age of juvenile court jurisdiction to age 21 in these cases is also a means of holding onto the offenders in the juvenile system and making more time available to work with them.

Moreover, although statistics were not available to confirm the impression, respondents also reported that a significant part of the EJJ caseload in Minnesota includes out-of-State youth and those who have recently moved to the State (e.g., "kids from Chicago arrested in Hennepin County; kids from Texas, whose parents are looking for work in Polk County"). This type of caseload causes significant problems in the areas of treatment, family involvement, aftercare, and integration back into the community. It also raises concerns because Minnesota has focused its resources over the past 20 years on early intervention yet must bear the expense of dealing with juveniles who have grown up in areas with potentially different social policy priorities and issues.

Finally, focus group discussions indicated that there may be substantial gender disparity in EJJ designation (in particular, that females "get more breaks" than males). Participants theorized that the disparity might result from the justice system's traditional inability to deal effectively with female offenders and from the lack of available programming for serious female offenders. Participants also expressed concern about the disproportionate number of minority youth said to be receiving the EJJ designation.

More Adversarial Atmosphere

Discussions with public defenders revealed a relatively aggressive attitude in defense of juveniles designated as EJJ, perhaps because these juveniles face significantly stiffer penalties due to the nature of EJJ sentencing. Public defenders expressed the opinion that the punitive approach being taken by prosecutors in response to both the new law and public opinion has made the system more adversarial. Public defenders also expressed concern regarding the "greater jeopardy" that EJJ youth are placed in because the suspended adult sanction can be invoked for relatively minor transgressions such as positive drug tests and noncompliance with treatment.

On the other hand, respondents indicated that the EJJ legislation has encouraged plea bargaining and explained that it appears to be common practice in serious cases for prosecutors to motion for certification and then "bargain down" to EJJ. In this way, first-time serious offenders (who are unlikely to be certified to criminal court) are ending up with the EJJ designation.

Case Delays

Focus groups indicated that the case-processing timelines established in the legislation are not being followed. The consensus among participants was that the timelines are too short to be realistic and that it is common practice for defense lawyers to waive them. As a result, the court process may not proceed in a timely manner, and youth may be held in juvenile detention for extended periods of time. Defense lawyers, however, do not necessarily see this delay as negative, because youth often receive credit for "time served" in juvenile detention facilities.

Impact on Sentencing

Need for Guidelines

Many respondents expressed a need for sentencing guidelines for EJJ youth and for ways to ensure that "sentences will stick." In some cases, the blended sentence is less severe than a straight delinquency sentence, although the youth has the suspended criminal sanction "hanging over his or her head." Respondents also reported courts' general hesitancy to send youth to prison for offenses that would not result in prison time for adults. Thus, the EJJ legislation is effectively limited by criminal justice standards in Minnesota—a State with the lowest adult incarceration rate in the United States.[5]

[5] Minnesota's adult incarceration rate is 110 prisoners per 100,000 resident population, as compared to a national rate of 443 per 100,000 (Bureau of Justice Statistics, 1999:79).

Profile of EJJ Offenders

- **EJJ Designation.** Use of the EJJ designation has varied widely across the State. A total of 220 EJJ cases were disposed statewide in 1997. Hennepin County (the Fourth Judicial District) had the largest number of EJJ cases (85), followed by the Ninth District (17 rural northwestern counties) (37) and Ramsey County (the Second District) (29). The Eighth District (13 rural/suburban central counties) had the lowest number of EJJ cases (2) (Minnesota Supreme Court, 1999). During the first 21 months of implementation, only 47 counties (55 percent) used the EJJ designation at all (Minnesota Department of Corrections, 1997).
- **Court Process.** Of the 220 EJJ cases disposed statewide in 1997, only 5 were decided by jury trial. The vast majority of EJJ offenders either admitted guilt (73 percent) or had a bench trial (25 percent) (Minnesota Supreme Court, 1999).
- **Demographic Profile.** During the first 4 years of EJJ's implementation, the typical EJJ-designated youth was a 16- or 17-year-old white male.
  - Ninety-five percent were male.
  - Eighty-three percent were 16- or 17-year-olds; only 2 percent were 14-year-olds.
  - Forty-two percent were white, 35 percent African American, 8 percent Hispanic, 8 percent American Indian, and 7 percent Asian (Minnesota Department of Corrections, 1997). This compares with a State racial profile of 92 percent white (including Hispanic), 3 percent African American, 2 percent American Indian, and 3 percent Asian (Minnesota Supreme Court, 1999).
- **Offense Profile.** The offense profile of the 220 EJJ cases disposed of in 1997 was as follows: person offenses (59 percent), property offenses (28 percent), drug offenses (6 percent), and other offenses (7 percent). A breakdown of the person offense category was as follows: assault (57 cases), criminal sexual conduct (24 cases), and homicide (13 cases). Felony burglary (47 cases) and robbery (36 cases) also represented major offense categories (Minnesota Supreme Court, 1999).
- **Prior Offense History.** The EJJ legislation was intended to be "a last chance" for serious and/or chronic offenders: 46 percent of EJJ-designated youth had no prior history of felony adjudications, 43 percent had one to three prior felony adjudications, and only 11 percent had four or more prior felony convictions. Those juveniles certified to criminal court had an even less chronic history—with 64 percent having no prior felony adjudications, 31 percent having one to three prior felonies, and only 5 percent having four or more prior felony convictions (Minnesota Supreme Court, 1999).
- **Prior System Involvement.** Hennepin County data provide a more detailed snapshot of juveniles motioned for EJJ and criminal court certification. Eleven percent of these youth had been involved in child protection services, 80 percent had prior delinquency petitions, 67 percent had prior delinquency adjudications, and 51 percent had a prior felony adjudication (Podkopacz, 1998).
- **EJJ Sentence.** Once convicted, 39 percent of EJJ offenders were placed locally, 25 percent were placed in out-of-State facilities, 19 percent were committed to a State facility, and 17 percent received no out-of-home placement (Minnesota Supreme Court, 1999).
- **Juvenile Sentence Revocation.** During the first 21 months of EJJ implementation, 14 percent (49 of 341) of EJJ-designated youth had their juvenile dispositions revoked and adult sentences executed. Of these 49 juveniles, 37 percent (18) were incarcerated in adult prison (Minnesota Supreme Court, 1999). In Hennepin County, 72 percent of these offenders had their dispositions as juveniles revoked for probation violations (including placement breakdown) and 28 percent for new charges. Forty-three percent were revoked during aftercare and 57 percent prior to receiving community-based aftercare services (Bryan, 1998).

Judicial and Prosecutorial Discretion in Sentencing Decisions

Respondents also had serious concerns about the judicial and prosecutorial discretion allowed in sentencing decisions under the EJJ law. For instance, judges may decline to impose the stayed adult sentence on EJJ youth who have failed to meet the conditions of their juvenile disposition. The lack of judicial and prosecutorial guidelines for EJJ designation decisions and the unwillingness of judges to "drop the hammer" on youth who have not followed the terms of their juvenile sentence were identified as problems. Concern was also raised regarding judicial discretion as to what constitutes public safety, particularly the differing standards in rural and urban communities. EJJ designation was reportedly used by some judges as an alternative to certifying juveniles who previously would have entered the criminal justice system.

Predisposition Assessment Services

A number of respondents identified a need for predisposition assessments under the law (to identify youth who can be successfully rehabilitated, determine what services they need, and predict their response to sentencing). No statewide data are available on the types of assessments EJJ offenders completed during the court process. The Fourth Judicial District (Hennepin County), however, reported that in 65 percent of EJJ and criminal court certification cases, the court ordered a probation assessment that included school, family, and delinquency background checks and interviews and collateral interviews. The court ordered a full psychological evaluation in 61 percent of the EJJ and certification cases and followed the probation officer's recommendation 73 percent of the time and the psychologist's recommendation 76 percent of the time (Podkopacz, 1998).

Impact on Correctional Resources

In terms of the development and delivery of services for EJJ youth, respondents indicated that the State has not articulated a vision or policy on the appropriate continuum of services for this population. Instead, jurisdictions have been left to answer this question for themselves, resulting in wide divergence by locale. In addition, treatment services must compete with prevention/early intervention services for limited resources—the latter long having been the priority within the State. Every focus group identified the need to expand the range of services available to EJJ youth. (In Minnesota, juvenile probation is organized at the county level with State or local funding; DOC administers all juvenile and adult correctional institutions; and detention facilities are operated by the county or regionally where counties have collaborated.)

According to respondents, the funding of services on a per-juvenile basis has left rural areas, already strapped for resources, without the critical mass of EJJ-designated youth necessary to develop and deliver specialized services. Some expressed concern that, although the subsidy was much needed, the method of allocation did not support coherent program planning or development. Moreover, respondents noted, the money comes at the front end, and the cost for services is ongoing during the course of a juvenile's sentence. The most significant need is often for aftercare and followup services, and by then, available funding is often exhausted.

By contrast, metropolitan Hennepin County has been able to develop specialized services and supervision resources (such as intensive probation) for EJJ-sentenced youth. This ability results from the relatively large number of such youth moving through Hennepin's system annually.

Respondents also noted that the EJJ legislation is being implemented concurrently with the Balanced and Restorative Justice (BARJ) initiative.[6] Consequently, program development has focused primarily on community-based sanctions, restitution, case management, and skill/competency development. Intensive supervision and aftercare services have also been identified as critical components of EJJ and BARJ efforts.

[6] Balanced and Restorative Justice (BARJ), a core component of the OJJDP Comprehensive Strategy, is a combination of the Balanced Approach and the Restorative Justice models. It includes community protection, offender accountability, offender competency development, and victim restoration.

Services for Special Needs Offenders

Services are needed for both younger EJJ youth and older offenders. Younger youth, for example, may need family interventions, secondary prevention, and community-based services to avoid out-of-town residential placement. Older offenders, on the other hand, may need such services as intensive supervision, rehabilitative services, and vocational training. With respect to services, respondents identified pressures (1) not to impose sanctions on younger youth and (2) to impose criminal sanctions on older youth when necessary services are unavailable within the juvenile court system.

Specialty treatment services (for example, sex offender or drug and alcohol programs) are often difficult or impossible to secure in rural areas, resulting in out-of-area residential placement and increased costs for rural jurisdictions. Finding appropriate interventions for female offenders is also difficult. Some private providers are reportedly developing programs to address these issues, but major gaps remain. Some respondents, for example, reported that girls may be serving their juvenile sentences in adult prison if it is the only secure facility available.

Facilities Management

Residential facilities working with young adults ages 18 to 21 face licensure as well as programming and security issues related to this population. Managers of these facilities report grouping offenders so that there is no more than a 4-year age difference between the oldest and the youngest offender. EJJ youth are reported to be more easily managed in facilities (apparently because of the criminal sanctions "hanging over their heads") than juveniles certified and committed by the criminal court. Interestingly, the State-run St. Cloud prison has a long history of programming for older juvenile offenders and has filled the gap with services for 19- through 21-year-olds before sending them to another prison. St. Cloud receives all new commitments of youth statewide under the age of 20, and EJJ youth have no special status within the facility.

Under EJJ, Hennepin County youth are reportedly being sent to the county jail (a work facility) because judges are increasingly reluctant to impose full criminal sentences and send the youth to prison. The "workhouse," as it is called, is seen as a viable compromise by judges. Similar sentiments were expressed in judicial districts statewide.

Conclusion

Three-and-a-half years after the EJJ law was implemented, Minnesota practitioners have a generally positive reaction to the legislation. The underlying theme that emerged from most focus group discussions was that the legislation is a sound alternative to the single waiver option available in Minnesota prior to EJJ. Respondents also expressed pride that the reform legislation has attempted to get the attention of young people while at the same time strengthening the community, linking youth with jobs, and supporting competency development and accountability. The legislation was designed to provide a framework for changes to the juvenile justice system and provide new tools and resources to the field.

As might be expected, problems with the EJJ law have also arisen. Although the transition period has had its difficulties, local adaptations are being made and, at the State level, considerations are under way to modify and fine-tune the legislation. Key actors throughout the system appear poised to participate in the refinement process and committed to providing troubled Minnesota youth with every opportunity to turn their lives around.

Lessons Learned

States made significant changes in the 1990's to target serious and violent juvenile crime. From 1992 through 1995, all but a handful of States changed major portions of their juvenile codes to make more juveniles eligible for criminal prosecution and/or sanctions. The trend continued during the 1996 and 1997 legislative sessions, when all but 11 States amended their jurisdictional, sentencing, or correctional programming laws to similar effect (Torbet et al., 1996; Torbet and Szymanski, 1998). Although documenting the overall direction and magnitude of these nationwide changes is important, what may be more useful at this stage is closer study of their actual implementation and State-by-State impact. This final chapter explores some significant questions that remain unanswered by the research presented above and summarizes the lessons learned from the three State case studies and from the authors' comprehensive analysis of State legislative activity.

Unanswered Questions

Although the case studies answered a number of questions, they raised even more—many of which simply cannot be answered at this point. Such questions include the following:

- What impact will the recent reforms have on the attitudes, behaviors, and long-term life prospects of juvenile offenders?
- How will the changes affect recidivism and, ultimately, public safety?
- What developmental effects will long prison stays, extended isolation from prosocial influences, possible exposure to physical and sexual abuse, and assimilation into a violent criminal subculture have on adolescents being incarcerated in adult facilities?
- What impact will exposure to the adult criminal corrections system have on juvenile offenders' chances of being reintegrated into the community once released?

These questions revolve around three general considerations: the actual deterrent effects of the reforms, juveniles' misperceptions regarding the workings of the criminal law, and the effects of introducing juveniles into the adult criminal corrections system.

Deterrent Effects

Many recent reforms are predicated in part on the assumption that more punitive approaches to youth crime will have a deterrent effect. The juveniles targeted by these changes, however, may not even be aware of the potential sanctions. Although some States have taken steps to educate youth on the consequences of reforms,[7] not all States have been so active. This may not matter when the changes involved are simple. In the case of Wisconsin's straightforward redrawing of the upper age of juvenile jurisdiction, for example, the legislature's intended message may have reached the streets quickly and been easily understood by young people. The actual deterrent effects of more intricate and subtle juvenile justice reforms, particularly in relation to first-time serious offenders or complicated scenarios of blended sentencing, are less clear. Even if a stringent reform is clear and easily understood, whether or not it in fact deters juveniles from committing crimes also remains unclear.

[7] Arizona, which significantly expanded its transfer provisions in 1996 (following voter approval of a State constitutional amendment known as the "Stop Juvenile Crime Initiative"), thereafter embarked on an aggressive multimedia public information campaign targeting teenagers and designed to spell out the consequences of the reforms for juvenile lawbreakers.

Juveniles' Misperceptions Regarding Criminal Court Adjudication

The most straightforward message may lose something when conveyed to a State's juvenile delinquent population. The serious disadvantages of being subjected to criminal sanctions are not always apparent to the young. In Wisconsin, many 17-year-olds appear to be welcoming their new criminal responsibility—judging, rightly or wrongly, that being moved into the criminal justice system, at least for the less serious categories of crime, actually represents a kind of break. The change does not by itself mean a greater likelihood of incarceration or a longer period of confinement. The opportunity to be released on bail appeals strongly to shortsighted teens who, as one Wisconsin public defender explained, just want to "return to the party." A quick guilty plea and a sentence to adult probation may likewise seem less onerous than a juvenile disposition that requires regular reporting to a day-treatment program, community service work, or long-term counseling. This is particularly true for youth who do not fully understand the lifelong consequences of a felony conviction in criminal court and are not aware of how swift and certain adult probation revocation can be in terms of jailtime.

At the very least, the exposure of broad categories of juveniles to serious adult sanctions raises troubling questions regarding teenagers' competency to make plea decisions and the adequacy of consultation and representation in such cases. These issues are presented even more starkly in States with chronic offender laws under which juveniles may find themselves facing "third strikes" without ever having been represented by counsel.

Consequences of Introducing Juveniles Into the Adult Criminal Corrections System

The confinement of large numbers of juveniles in jails and prisons has been one of the most significant and potentially worrisome consequences of the recent round of juvenile justice reforms. The change poses logistical, programming, security, and other challenges that are only now being recognized. In some cases, these may be relatively trivial, such as the difficulty encountered by Wisconsin jailers when faced with a new crop of 17-year-old detainees, who technically could not receive medical treatment without written consent from their parents. However, most of these challenges are considerably more serious:

- How to channel educational and other vital, State-mandated services to juveniles who may be isolated in pockets throughout the adult criminal corrections system, under the supervision of officials with no experience or expertise in overseeing such services.
- How to accommodate accused minors during lengthy periods of pretrial detention in facilities designed neither for young people nor for long stays.
- How to protect the safety of youth thrown into daily contact with adult inmates.

Generally, the wider the net cast by a reform—that is, the broader the age or offense categories targeted for criminal sanctions—the more likely it is to result in assault or exploitation of minor inmates by adult prisoners. However, according to early reports from New Mexico correctional officials responsible for "the worst of the worst," the opposite may occur as well: A settled adult prison culture may be threatened by the introduction of an unpredictable, disruptive, and potentially dangerous juvenile element.

Lessons Learned

The authors' observations of reform implementation in the three States studied, comprehensive analysis of State legislative activity, and conversations with practitioners about recent changes yielded a number of broad lessons that could be of use to policymakers considering similar reforms.

A Disconnect Exists Between the Legislative Intent and the Actual Implementation of New Laws

What often characterized the implementation of the reforms described in this Report were an overall lack of deliberate, statewide planning; inadequate lead times; and insufficient efforts to educate practitioners regarding the changes. Moreover, legislative

prescriptions that sought to promote accountability by increasing punishment frequently anticipated resources and capacity that did not exist at the time of implementation. The mandate for change exceeded the capacity of the system to manage, monitor, and evaluate change.

Local responses to the new laws tended to be improvised and differed widely from place to place. The short-term result in most local jurisdictions was often confusion—regarding the intent of the new laws, the qualifications for the new serious-offender classifications, the procedures for processing these offenders, and the offenders' status and treatment during pretrial holding and other stages. Because implementation of new reforms was not staggered, local practitioners did not have enough time for planning, programming, and cross-training. Lag time between enactment of the new laws and the availability of funding for programs hampered the development of local intervention resources for the target populations as well.

The American Correctional Association, in its recently ratified "public correctional policy on youthful offenders transferred to adult criminal jurisdiction," encourages the preparation and consideration of fiscal and correctional impact assessments before the enactment of new legislation (American Correctional Association, 1999). Similar advice has come from an American Bar Association task force chaired by former Attorney General Edwin Meese III, which recommended that Congress require a cost analysis and a public policy analysis of any Federal criminal law before its enactment (Task Force on the Federalization of Criminal Law, 1998). Applied to State legislative proposals on serious and violent juvenile crime, such cost analyses or impact assessments would provide objective data upon which legislators could base decisions—comparing costs, assessing needs, and examining the benefits and risks to be expected. Public policy analysis conducted by a legislative review committee, considering the informed opinions of juvenile and criminal correctional professionals, could also assess proposed crime legislation. At a minimum, such assessments would pinpoint the potential target population, specify policy and program changes necessitated by the proposed law, and anticipate shifts in workload and likely resource gaps that would result.

The same task force report also recommended that once passed, new laws should include "sunset" or "second look" provisions under which, after a stated period of years, the impact of the particular statute would be assessed.

Blended Sentencing Laws Encourage Plea Bargaining

It is common practice in Minnesota for prosecutors to file a motion for criminal certification and then "bargain down" to extended jurisdiction in juvenile court. As a result, first-time serious offenders in Minnesota, most of whom are unlikely to be certified, are being designated as EJJ cases. Prosecutors engaged in plea bargaining negotiations in New Mexico are also using the threat of a criminal sanction as leverage to guarantee the imposition of juvenile sanctions. Although the new sentencing laws thus appear to encourage plea bargaining, it is not clear whether the effect was intended or whether the practice has, in fact, become more common. Nor is it clear what effect such bargaining has on a juvenile's sense of responsibility for the damage caused by his or her crime.

Blended Sentencing Provisions Expand Judicial and Prosecutorial Discretion

The authority to decide when juvenile offenders are beyond the rehabilitative reach of the juvenile justice system was once entrusted almost exclusively to juvenile court judges. In the first half of the 1990's, however, that changed considerably, as more and more States passed laws excluding serious offenses from juvenile court jurisdiction or granting transfer authority to prosecutors. These changes can be traced, in part, to the prevailing sentiment that juvenile court judges were "soft" on crime and that shifting power away from them would increase the likelihood that serious and violent offenders would be held accountable for their actions. Nevertheless, the case studies in Minnesota and New Mexico demonstrate that blended sentencing laws, whether they replace or supplement existing transfer laws,

leave juvenile court judges with considerable authority to fashion individualized, offender-based dispositions and to consider not only offense seriousness and community safety but also the background and court history of the individual juveniles before them.

New blended sentencing laws have also greatly expanded prosecutors' authority by entrusting them with broad discretion to decide when to seek special offender designations or criminal sentencing options. These decisions are generally not subject to formal guidelines or systematic reporting requirements. Unlike a judge's waiver and sentencing decision, a prosecutor's decision to try a juvenile in criminal court or seek criminal sanctions is not usually required to be made on the basis of a written record or in accordance with criteria that are specified beforehand and applicable to all cases. Mandatory, routine reporting requirements similar to those that have long been applicable to juvenile courts would also help ensure that prosecutorial handling of transfer and sentencing decisions could be studied after the fact.

Local Application of New Sentencing Laws Varies Widely

The case studies documented significant differences in the way local jurisdictions apply blended sentencing laws. Some counties appear to apply the new rules sparingly, while others apply them across the board. In New Mexico, for example, the district attorney in one county seeks criminal sanctions in all cases in which they are available. District attorneys in another county seek criminal sanctions only for a selected few. In Minnesota, data revealed considerable differences between urban and rural jurisdictions with regard to applying the extended jurisdiction designation to property offenders. Consideration should be given to setting meaningful guidelines for the exercise of both prosecutorial and judicial discretion in making designation, sentencing, and review decisions under the reforms to ensure fair and appropriate decisionmaking. Likewise, expanded sentencing authority requires that judges have an accurate understanding of the sanctions and services available in both the juvenile and adult correctional system.

New Sentencing Laws Have a Disproportionate Impact on Minorities

Minorities are overrepresented in the offender categories being subjected to stricter transfer and sentencing provisions—for example, youth who have extensive juvenile records and youth who commit serious and violent offenses, particularly with weapons. The Minnesota and New Mexico case studies confirm that African American and Hispanic youth make up a disproportionate share of offenders who receive extended jurisdiction designations or are subject to motions for criminal sanctions.

Expanded Sentencing Laws Require New Resources/Interventions

Virtually all local case study participants called for an expanded range of community-based services for targeted juveniles. In addition, new services were considered particularly crucial for juveniles being held in State juvenile facilities for longer periods as a result of reforms extending the upper age of the juvenile court's jurisdiction over adjudicated delinquents.

Research has documented several principles of effective intervention that should guide correctional programming (see Bilchik, 1998; Kurlychek, Torbet, and Bozynski, 1999; Levrant et al., 1999). States must be strategic in articulating visions and plans for their juvenile justice systems that consider public safety, offender rehabilitation, and victim reparation as significant elements and incorporate best practice principles and the appropriate continuum of sanctions and services for the targeted subset of juvenile offenders. Serious, violent, and chronic juvenile offenders represent a very small proportion of all delinquents, but they impose significant costs on the system and present real threats to their communities. Research, however, has documented considerable cost savings in the long term when offenders are diverted from their criminal careers.

Categorical Age Exclusions Have Unanticipated Consequences

Despite Wisconsin officials' conscious efforts to resist lowering the transfer threshold after changing the age of criminal responsibility to 17, waiver petitions involving 16-year-olds increased 90 percent in Milwaukee County in the first year after the new law took effect. Waivers were not being sought for 16-year-olds to the same extent as they had been for 17-year-olds, but merely being 16 clearly increased an offender's chances of being waived. Another unanticipated consequence of the new law was an increase in per diem charges to counties as a result of a temporary reduction in the State training school population. This, in turn, interfered with local efforts to spend existing juvenile justice resources on a younger population.

Finally, Wisconsin's removal of 17-year-olds from the juvenile court's original jurisdiction had a significant "net-widening" effect that may not have been entirely foreseen. Because 17-year-olds charged with serious and violent crimes were reportedly already being transferred to criminal court (via judicial waiver) before the law was changed, the impact of the reform has been felt primarily by 17-year-olds charged with less serious, nonviolent offenses. Lowering the age of criminal responsibility has thus required an increase in prosecutorial resources for diversion of such cases.

Treating Juvenile Offenders as Criminals Creates Problems for Adult Corrections

Except for purposes of criminal responsibility, 17-year-olds remain minors under Wisconsin law. Juveniles sentenced in criminal court in other States are likewise still minors in all other respects. The most immediate implications of Wisconsin's reforms centered on anomalies arising from the "in-between" status of these individuals. Most of the policy issues and programming challenges described by respondents from the adult corrections system resulted from the in-between legal status of minors in criminal justice system facilities.

More Data Collection and Systematic Followup Are Needed To Judge the Impact of Reforms

The case studies presented here are intended to shed light on the implementation stage of a significant group of State-level juvenile justice reforms. However, the real impact of those reforms and others that expose juvenile offenders to adult criminal sanctions is still largely unknown—and will remain unknown until State and local officials commit themselves to the task of collecting and developing the data needed to assess their effects. Detailed profiles of offenders affected by the latest round of reforms (like those compiled on EJJ offenders in Hennepin County, MN) would serve two main purposes:

- They would allow policymakers to compare the sorts of juvenile offenders targeted by the reforms with those who have actually been hit by the reforms.
- They would also provide information about whether the harshest penalties have in fact been reserved for "the worst of the worst" and whether any biases have tainted transfer and sentencing decisions.

Further study devoted to the uses of discretionary authority to invoke criminal sanctions against certain juveniles—particularly in prosecutors' offices—would also be useful to determine the reasons for such decisions and the extent to which they correspond with the public's expectations. More reliable and complete information on what happens to juveniles after they are placed in correctional settings with adults—in addition to what happens to them after they leave—is obviously essential to any short-term consideration of the costs and benefits of these initiatives and to any long-term evaluation of their success.

The authors hope that the three case studies in this Report—even though they do not address all of the questions raised by the legislative reforms of the 1990's—will stimulate future research and provide a solid basis for purposeful legislation.

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Publications From OJJDP

OJJDP produces a variety of publications—Fact Sheets, Bulletins, Summaries, Reports, and the *Juvenile Justice* journal—along with videotapes, including broadcasts from the juvenile justice telecommunications initiative. Through OJJDP's Juvenile Justice Clearinghouse (JJC), these publications and other resources are as close as your phone, fax, computer, or mailbox.

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The following list highlights popular and recently published OJJDP documents and videotapes, grouped by topical areas.

The OJJDP Publications List (BC000115) offers a complete list of OJJDP publications and is also available online.

In addition, the OJJDP Fact Sheet Flier (LT000333) offers a complete list of OJJDP Fact Sheets and is available online.

OJJDP also sponsors a teleconference initiative, and a flier (LT116) offers a complete list of videos available from these broadcasts.

Corrections and Detention

Beyond the Walls: Improving Conditions of Confinement for Youth in Custody. 1998, NCJ 164727 (116 pp.).

Disproportionate Minority Confinement: 1997 Update. 1998, NCJ 170606 (12 pp.).

Disproportionate Minority Confinement: Lessons Learned From Five States. 1998, NCJ 173420 (12 pp.).

Juvenile Arrests 1997. 1999, NCJ 173938 (12 pp.).

Reintegration, Supervised Release, and Intensive Aftercare. 1999, NCJ 175715 (24 pp.).

Courts

Guide for Implementing the Balanced and Restorative Justice Model. 1998. NCJ 167887 (112 pp.).

Innovative Approaches to Juvenile Indigent Defense. 1998, NCJ 171151 (8 pp.).

Juvenile Court Statistics 1996. 1999, NCJ 168963 (113 pp.).

Offenders in Juvenile Court, 1996. 1999, NCJ 175719 (12 pp.).

RESTTA National Directory of Restitution and Community Service Programs. 1998, NCJ 166365 (500 pp.), $33.50.

Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions. 1998, NCJ 172836 (112 pp.).

Youth Courts: A National Movement Teleconference (Video). 1998, NCJ 171149 (120 min.), $17.

Delinquency Prevention

1998 Report to Congress: Juvenile Mentoring Program (JUMP). 1999, NCJ 173424 (65 pp.).

1998 Report to Congress: Title V Incentive Grants for Local Delinquency Prevention Programs. 1999, NCJ 176342 (58 pp.).

Combating Violence and Delinquency: The National Juvenile Justice Action Plan (Report). 1996, NCJ 157106 (200 pp.).

Combating Violence and Delinquency: The National Juvenile Justice Action Plan (Summary). 1996, NCJ 157105 (36 pp.).

Effective Family Strengthening Interventions. 1998, NCJ 171121 (16 pp.).

Juvenile Accountability Incentive Block Grants Strategic Planning Guide. 1999, NCJ 172846 (62 pp.).

Parents Anonymous: Strengthening America's Families. 1999, NCJ 171120 (12 pp.).

Prenatal and Early Childhood Nurse Home Visitation. 1998, NCJ 172875 (8 pp.).

Treatment Foster Care. 1999, NCJ 173421 (12 pp.).

Gangs

1996 National Youth Gang Survey. 1999, NCJ 173964 (96 pp.).

Gang Members on the Move. 1998, NCJ 171153 (12 pp.).

Youth Gangs: An Overview. 1998, NCJ 167249 (20 pp.).

The Youth Gangs, Drugs, and Violence Connection. 1999, NCJ 171152 (12 pp.).

Youth Gangs in America Teleconference (Video). 1997, NCJ 164937 (120 min.), $17.

General Juvenile Justice

Comprehensive Juvenile Justice in State Legislatures Teleconference (Video). 1998, NCJ 169593 (120 min.), $17.

Guidelines for the Screening of Persons Working With Children, the Elderly, and Individuals With Disabilities in Need of Support. 1998, NCJ 167248 (52 pp.).

Juvenile Justice, Volume V, Number 1. 1998, NCJ 170025 (32 pp.).

A Juvenile Justice System for the 21st Century. 1998, NCJ 169726 (8 pp.).

Juvenile Offenders and Victims: 1999 National Report. 1999, NCJ 178257 (232 pp.).

OJJDP Research: Making a Difference for Juveniles. 1999, NCJ 177602 (52 pp.).

Promising Strategies To Reduce Gun Violence. 1999, NCJ 173950 (253 pp.).

Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs. 1997, NCJ 163705 (52 pp.).

Missing and Exploited Children

Portable Guides to Investigating Child Abuse (13-title series).

Protecting Children Online Teleconference (Video). 1998, NCJ 170023 (120 min.), $17.

When Your Child Is Missing: A Family Survival Guide. 1998, NCJ 170022 (96 pp.).

Substance Abuse

The Coach's Playbook Against Drugs. 1998, NCJ 173393 (20 pp.).

Drug Identification and Testing in the Juvenile Justice System. 1998, NCJ 167889 (92 pp.).

Preparing for the Drug Free Years. 1999, NCJ 173408 (12 pp.).

Violence and Victimization

Combating Fear and Restoring Safety in Schools. 1998, NCJ 167888 (16 pp.).

Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. 1995, NCJ 153681 (255 pp.).

Report to Congress on Juvenile Violence Research. 1999, NCJ 176976 (44 pp.)

Serious and Violent Juvenile Offenders. 1998, NCJ 170027 (8 pp.).

Serious and Violent Juvenile Offenders: Risk Factors and Successful Interventions Teleconference (Video). 1998, NCJ 171286 (120 min.), $17.

State Legislative Responses to Violent Juvenile Crime: 1996–97 Update. 1998, NCJ 172835 (16 pp.).

White House Conference on School Safety: Causes and Prevention of Youth Violence Teleconference (Video). 1998, NCJ 173399 (240 min.), $17.

Youth in Action

Community Cleanup. 1999, NCJ 171690 (6 pp.).

Cross-Age Teaching. 1999, NCJ 171688 (8 pp.).

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Plan a Special Event. 1999, NCJ 171689 (8 pp.).

Planning a Successful Crime Prevention Project. 1998, NCJ 170024 (28 pp.).

Stand Up and Start a School Crime Watch. 1998, NCJ 171123 (8 pp.)

Two Generations—Partners in Prevention. 1999, NCJ 171687 (8 pp.).

Wipe Out Vandalism and Graffiti. 1998, NCJ 171122 (8 pp.).

Youth Preventing Drug Abuse. 1998, NCJ 171124 (8 pp.).

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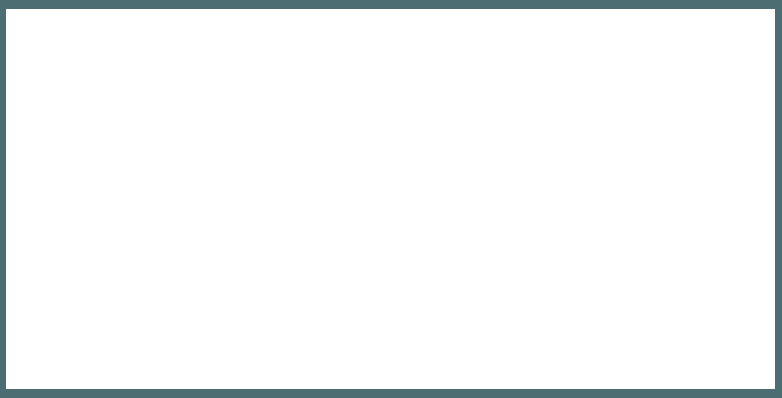

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