

MINNESOTA'S EXPERIENCE IN REVISING ITS JUVENILE CODE AND PROSECUTOR INPUT IN THE PROCESS

September 1997

In 1991, Minnesota began a major effort to substantially revise the laws governing our juvenile justice system. Minnesota's prosecutors played a role in that process. These materials are intended to give you oversight as to how this major initiative was handled in Minnesota and some insight into how prosecutors can best be involved in such an effort based upon our experience in the process of revising Minnesota's juvenile code.

THE MINNESOTA PROCESS

As was true in many areas of this Country, juvenile crime, especially serious and violent juvenile crime, had been on the rise in Minnesota during the decade of the 1980's. Public outrage over this growing level of violence, and the inability of our juvenile justice system to sufficiently address it, led to the beginning of a process to make some major changes to our juvenile laws in Minnesota.

Our existing juvenile justice system in 1991 provided for juvenile court jurisdiction to end upon the juvenile offender reaching the age of 19. This prior law allowed prosecutors to seek certification to adult court for certain juvenile offenders. The burden of proof in such certification efforts was by clear and convincing evidence and rested with the State. The State was required to show that the child was not suitable for treatment in the juvenile system or that the public safety would not be served by keeping the case in juvenile court. In certain prima facie cases¹, the burden to sustain certification initially rested

¹ Our prior law had provisions for a prima facie case of certification to adult court if the juvenile was accused of first degree murder and other violent offenses, such as kidnapping, criminal sexual conduct, arson, etc., provided: (1) the juvenile was alleged to have acted with particular cruelty or disregard for the life or safety of another, or (2) the offense involved a high degree of sophistication or planning, or (3) the juvenile used a firearm in the commission of the crime.

upon the juvenile to show some evidence that certification should not occur and once this was done, the burden shifted back to the prosecutor. For all practical purposes the burden remained with the prosecutor under this system.

Certifications to adult court under our prior Minnesota law were often difficult to obtain even for very violent offenses, and were based in large part upon the testimony of psychologists and psychiatrists. The system was not working well. The public was becoming increasingly upset by the reality that our juvenile justice system leaned far more toward the interests of the offender than those of the victim. Rehabilitation and what was in the best interests of the child had long been the primary focus of Minnesota's system of juvenile justice. Issues such as the importance of providing appropriate levels of punishment and protecting the public safety did not play a significant role in how juvenile cases were handled. However, the pattern of criminal behavior to which the juvenile justice system was attempting to respond had changed greatly since our previous system had been put in place fifty years ago. The public concern regarding this process was heard by the members of the Minnesota Legislature, which began a process to reform our juvenile code in 1991.

BEGINNING THE MOVEMENT FOR CHANGE

The beginning of the movement to revamp the juvenile justice system in Minnesota began by legislative action in 1991. Legislative committee hearings were held over the summer and fall where input was solicited and received from all key players in the juvenile system, including victims, youth, corrections, judges and prosecutors.

POINTS OF EXPERIENCE – BEGINNING THE MOVEMENT FOR CHANGE

- *If your state is beginning to review changes to your system of juvenile justice, it is important for prosecutors to get prepared.*
- *Prosecutors need to develop an organized position concerning juvenile code changes at an early stage in the process.*
- *Your state prosecutors' association can assist in developing such a position.*
- *You should pursue your own efforts to solicit public opinion on this issue. For example, prosecutors can coordinate and hold public hearings concerning juvenile crime. If you do this, make an effort to meet with youth as well.*
- *Prosecutors should develop their own written report on improvements needed in the juvenile justice system. [The Minnesota Attorney General did this even though he has no jurisdiction to prosecute juvenile offenders in Minnesota. Local prosecutors with juvenile jurisdiction should take the lead in preparing such a report.]*
- *Once such a report is completed, it should be forwarded to legislative leaders.*
- *Prosecutors should draft proposed legislation to accomplish the needed changes and seek authors to pursue this legislation.*

PLANNING FOR CHANGE

The message that change was needed was heard in Minnesota. In 1992, a bill was passed into law formally creating a task force to study in greater detail the juvenile justice system in Minnesota. The task force was under the direction of our Supreme Court. It was chaired by a Supreme Court Justice and consisted of four judges, two members from both the Minnesota House and Senate, two law professors, two corrections administrators, two corrections administrators, the commissioner of human

services and corrections, two public members, two law enforcement officers, the State Public Defender and one county attorney.

POINTS OF EXPERIENCE - PLANNING FOR CHANGE

- *BE ORGANIZED. DEVELOP AN AGENDA WHICH INCLUDES PROSECUTOR RECOMMENDATIONS.*
- *Once the position of prosecutors in your state is developed, make sure it is disseminated to appropriate parties--e.g. legislators, juvenile judges, juvenile task force members, your attorney general, and the public.*
- *The media can help get this message out.*
- *Minnesota's prosecutors were under-represented on the task force created to study this issue.*
- *Efforts should have been made to secure more representation of prosecutors.*

TASK FORCE REVIEW

Once formulated, the Minnesota Supreme Court Advisory Task Force on Juvenile Justice set out to meet its mandate of submitting a report to the Governor and Legislature by December 1, 1993, containing its findings and recommendations. It began by creating several committees: (1) Certification Committee, (2) Due Process Rights Committee, (3) Secure Facilities Committee, and (4) Sentencing Guidelines Committee. Eight public hearings were held at various locations throughout Minnesota, and eight site visits were made to existing juvenile program facilities in the State. Also, ten focus groups were held to receive input from specific groups. Included in these focus groups were: prosecutors, corrections' officials, defense attorneys, members of the Task Force on Racial Bias, law

enforcement, treatment providers, education officials, social services agencies, guardians ad litem, parents of juvenile offenders, and victims of crime.

POINTS OF EXPERIENCE - TASK FORCE REVIEW

- *GET INVOLVED and be active players in this effort.*
- *Minnesota's prosecutors failed to develop a unified position early in the process--DON'T MAKE THIS MISTAKE.*
- *Prosecutor testimony at public hearings and not just focus groups is needed. (This should be a coordinated effort across the State.)*
- *Prosecutors should help coordinate the testimony at public hearings of concerned citizens who want tougher laws concerning juvenile crime.*
- *No effort was made in Minnesota to encourage members of the public to support positions such as automatic adult certification for serious, violent and habitual offenders during a time when this could have made a difference.*
- *Obtaining petitions signed by members of the public encouraging legislators to get tough on juvenile crime can also be effective. Local community groups organized to address issues of crime and violence could help in this regard.*
- *BE A LEADER and not a FOLLOWER in this process. Develop a sound proposal, seek public support for it and shepard it through the legislative process.*

TASK FORCE REPORT

During the time these various public hearings, site visits and focus group meetings were being held, the Task Force began meeting to develop its findings and recommendations. Major changes were developed with widespread effect and cost. A report was circulated which for all practical purposes became the final product. Input after receipt of the draft report had no major effect on the final product. The Task Force ultimately made sweeping recommendations including:

1. Restructuring of the certification process, scraping the current criteria for certification and replacing it with a stronger public safety focus with a look to: (a) the seriousness of the present offense, (b) the culpability of the juvenile, (c) the public record of delinquency, (d) the prior program history, and (e) dispositional options. The burden of proof in presumptive certification cases (i.e. a juvenile 16 or 17 years old and charged with a crime that would result in a presumptive prison offense under Minnesota's Sentencing Guidelines if committed by an adult) was shifted to the juvenile. In such cases, the juvenile must show by clear and convincing evidence that he/she is suitable for treatment in the juvenile system and that such treatment is consistent with protecting public safety.

2. Establishment of a new category of "Extended Jurisdiction Juveniles" (EJJ) for the most serious and repeat juvenile offenders.² EJJ's would remain in juvenile court but would be dealt with in a manner more similar to adult convictions. The Task Force Report recommended that EJJ provisions include the following:

- The jurisdiction of juvenile court for EJJ's be extended to age 23. (This was later lowered to 21 by the Legislature.)
- EJJ's be afforded the right to a jury trial.

² The name reference for this category of offenders was called "Serious Youthful Offenders" in the original Task Force Report. It was changed to "Extended Jurisdiction Juveniles" by the Minnesota Legislature before these changes were enacted into law.

- An adult sentence would be imposed but initially stayed and a juvenile disposition ordered.
 - If an EJJ commits a new offense or violates terms of probation, the EJJ would be treated in the same manner as an adult violating probation, including being subject to execution of the adult stayed sentence.
 - All hearings of EJJ's would be open to the public.
 - EJJ's, if convicted, would receive the same criminal history points under Minnesota's Sentencing Guidelines as an adult would for a similar conviction.
3. Increasing juvenile's access to counsel in all delinquency proceedings, as follows:
- Consultation with a defense attorney would be mandatory in all misdemeanor cases prior to any waiver of counsel being effective.
 - Appointed counsel would be mandatory in all felony and gross misdemeanor cases. Consultation with counsel would be mandatory prior to any waiver of counsel being effective.
 - The State Public Defender would be given jurisdiction over all juvenile appeals.
4. Development of secure detention facilities and programming opportunities for all serious juvenile offenders. (Programming would be in the areas of chemical dependency, sexuality issues, anger management, etc.)
5. Other general recommendations including endorsement of the findings of the Task Force on Racial Bias; removal of data privacy barriers on sharing of juvenile data between agencies dealing with delinquent juveniles; interdisciplinary training for judges, probation officers, foster home parents, and service providers in areas such as family and community violence, child development, roots of violence and cultural diversity; and the establishment of a statewide juvenile criminal history system for tracking of cases.

POINTS OF EXPERIENCE – TASK FORCE REPORT

- *DON'T WAIT UNTIL THE TASK FORCE REPORT IS COMPLETED to voice your concerns. If you do, your input may be too late. ORGANIZE EARLY AND GET INVOLVED.*
- *Formulate and articulate prosecutor objections clearly and as early as possible in the process. In doing so, make sure your state prosecutor's organization receives timely reports from your representative(s) on the task force or similar group.*
- *Develop contacts with legislators who can help with making changes deemed important to prosecutors.*
- *Prosecutors should establish their own study group to address issues surrounding juvenile crime. This will let the public know that prosecutors are community leaders and are concerned with these issues. This will also enable you to develop stronger support for changes you feel are necessary—such as automatic adult certification for the most serious, violent and repeat juvenile offenders.*

THE LEGISLATIVE PROCESS

Once the Task Force report was completed and presented to the Minnesota Legislature and Governor, the report was codified into bill form. With our bicameral legislature, the bills in our State House and Senate took on some different provisions in important areas. Public hearings were held. The hearing process was placed upon a fast track and it was difficult to offer meaningful amendments in the legislative process. The bills passed overwhelmingly in both the House and Senate and went to a conference committee to work out the differences. The final product incorporated almost all of the Task Force recommendations with a few modifications.

Minnesota's prosecutors tried to get a provision for automatic certification to adult court for juveniles between 16-18 years of age for certain specified violent offenses (including murder, rape and assaults with dangerous weapons) and for repeat juvenile felony offenders. We were partially successful

in the House version of the bill but had no success in the Senate. The conference committee left automatic certification in only for charges of first degree murder.

The Governor signed most provisions of this bill into law, vetoing a few portions with large cost implications. The Governor's vetoes included \$4 million allocated to the State Public Defender for increases in costs associated with providing counsel to juvenile offenders under the new law and costs associated with adding some new judges and some funds for probation supervision. Funding for most of these matters was provided by separate legislative action in 1995.

Minnesota's new juvenile code became effective on January 1, 1995.

POINTS OF EXPERIENCE – THE LEGISLATIVE PROCESS

- *Make sure to take the time to thoroughly review the legislative proposal(s) and prepare clear arguments pro or con.*
- *Prosecutors should draft proposed legislation (or amendments to existing bills) to insure that all needed changes are accomplished.*
- *Make sure prosecutor representatives are available to monitor the progression of the legislation and to testify at legislative hearings on the proposals.*
- *Work with other groups where possible to support your position. Input from the public can be the most effective message heard by the legislature, and you should help coordinate this.*
- *Work closely with your contacts in the legislature to insure that prosecutor recommendations are introduced as amendments.*
- *Public opinion to support prosecutor recommendations can also be gathered through use of the media. (This can, however, result in some negative feedback from legislators, so be cautious in this area.)*

SUMMARY

Our revised juvenile code has now been in effect for two and one-half years and we are just beginning to analyze its impact upon juvenile crime in Minnesota. The initial cautious optimism expressed by most prosecutors appears to be well founded. While our legislative changes did not contain certain provisions which were desirable to prosecutors, such as automatic certification to adult court for various designated crimes of violence and for multiple repeat offenders, these changes were clearly a step in the right direction. Some increases in costs have occurred with the new category of "Extended Jurisdiction Juveniles" and with providing the right to jury trial in all of these cases. Final analysis of the impact of these changes must await further study.

I attach for your reference a copy of that portion of Minnesota's new juvenile code dealing with "Extended Jurisdiction Juveniles" (Appendix A) and a summary of this and other specific changes which were made to Minnesota's juvenile code (Appendix B). Also attached are several charts concerning Minnesota's experience with our new certification and EJJ law from January 1, 1995, when they went into effect, through October 31, 1996 (Appendix C).

It is important for any prosecutor's office which handles juvenile cases out of a separate unit from adult criminal cases to establish clear guidelines as to how cases involving certification/transfer (or extended jurisdiction under Minnesota law) are dealt with between the two units. Attached as Appendix D is our office policy concerning this issue. It is also important to establish office-wide guidelines to insure consistency in charging and disposition of adult and juvenile criminal cases. The policy and guidelines we have established within our office in reference to these matters are available upon request.

I hope the experience of Minnesota's prosecutors in reference to the major revision of our State's juvenile justice system will provide those of you going through a similar process with some ideas and helpful information. Many of these suggestions are equally applicable to any major legislative revision

affecting the criminal justice system. If you would like any more information or input regarding Minnesota's experience in revising its juvenile code, or any of the other materials concerning Minnesota's law concerning juvenile certification to adult court or EJJ status, please contact James C. Backstrom, Dakota County Attorney, 1560 West Highway 55, Hastings, Minnesota, 55033-2392, Phone: (612) 438-4438.

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