

EXTENDED JUVENILE JURISDICTION  
“ONE MORE STRIKE AND YOU’RE OUT!”  
MINNESOTA’S BLENDED SENTENCING LAW



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In 1994, the Minnesota Legislature adopted a major revision to the laws governing our juvenile justice system. These materials are intended to give you oversight as to these legislative changes, with special emphasis on the provisions relating to “extended juvenile jurisdiction” which provide a form of blended sentencing for serious and violent juvenile offenders prosecuted in juvenile court.

**BACKGROUND**

As was true in many areas of this Country, juvenile crime, especially serious and violent juvenile crime, was 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 in 1991 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 cases<sup>1</sup>, the burden to sustain certification initially rested upon the juvenile to show some evidence that certification should not occur and once this was done, the

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<sup>1</sup> 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.

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.

### **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. The message that change was needed came from throughout 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.

### **TASK FORCE REVIEW AND REPORT**

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.

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, scrapping 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.<sup>2</sup> 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.
- 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.

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<sup>2</sup> 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.

- 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.

### **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. The law incorporated provisions 1-5 as set forth on pages 3-5 above. A more detailed summary of these changes is set forth in Appendix A.

### **EXTENDED JURISDICTION JUVENILES**

The one provision in Minnesota's new juvenile code that has attracted the most attention is the law relating to extended jurisdiction juveniles, commonly referred to as the EJJ law. (A copy of the law is attached as Appendix B.) The EJJ law was designed to establish a category for dealing with certain serious and violent offenders for whom adult court prosecution may not be the most appropriate disposition. For example, this category has been utilized for juveniles with no prior criminal history who have committed relatively serious crimes or for younger juvenile offenders (under age 16) who will have a longer period of juvenile court supervision under this process and who may not be appropriate for adult court transfer because of their age.

Minnesota's prosecutors have the authority to directly designate certain juveniles as an EJJ offender under the law. This applies to youth who are 16 or 17 years old at the time of the offense and the offense is one which would carry a presumptive prison sentence under Minnesota's Sentencing

Guidelines or if a firearm was used in the commission of the offense. In other cases, the prosecutor may file a motion seeking to have the court designate the juvenile as an EJJ offender. In these situations a hearing is held and the prosecutor must establish by clear and convincing evidence that the public safety would be served by an EJJ designation. The factors the juvenile court would consider in making this determination would include:

- The seriousness of the offense and any aggravating factors which might exist.
- The culpability of the child and any mitigating factors which might exist.
- The prior delinquency record of the child.
- Program history and level of participation of the child.
- The adequacy of the juvenile programs and punishment for the offense.
- Dispositional options available to the court.

In all cases where EJJ jurisdiction exists, juvenile court jurisdiction ends at age 21. However, if an adult sentence is executed prior to age 21, this sentence would be served even if it continues beyond the juvenile's 21st birthday. Any EJJ conviction carries the same criminal history points as if it was an adult conviction. It is also interesting to note that the EJJ offender status automatically applies to any juvenile whom the prosecutor has unsuccessfully sought to certify to adult court for prosecution.

Once designated as an EJJ offender, several significant changes in the law otherwise applicable to juvenile offenders occur. Specifically, the juvenile court's jurisdiction is extended from age 19 to age 21; the juvenile is entitled to a jury trial; and, if convicted, the juvenile receives both an adult sentence (which is stayed) and a juvenile disposition for the offense. This latter procedure is what is most unique about Minnesota's EJJ law and which brings it within an expanding number of states who are providing "blended sentencing" for juvenile offenders.



Under this blended sentencing aspect of Minnesota's EJJ law, the sentencing judge would impose an adult sentence in the same manner as it would for a similarly situated adult offender. This sentence must conform to Minnesota's Sentencing Guidelines (a copy of which is attached as Appendix C). Under Minnesota Sentencing Guidelines, the presumptive sentence for a convicted offender is computed based upon a two-tier ranking of the seriousness of the crime and the offender's prior criminal history. The sentencing judge is required to impose the presumptive sentence absent substantial and compelling reasons not to do so. Various mitigating and aggravating factors are set forth under the Guidelines and a sentencing judge can depart from the Guidelines in imposing a sentence provided there are written findings articulating the basis for the departure. The age of the offender is not a factor upon which a judge can depart from the presumptive sentence provided under the Sentencing Guidelines.

For juveniles designated as EJJ offenders, the adult sentence handed down is stayed and a juvenile disposition is imposed. Juvenile dispositions typically include requirements to remain law abiding and conform to other orders of the court, in addition to sanctions which may include completing a chemical dependency or other treatment program, serving time in a juvenile detention facility, paying restitution, performing community work service, etc.. If the juvenile violates the provisions of the juvenile disposition before age 21, a hearing is scheduled before the juvenile court to determine if the previously stayed adult prison sentence will be imposed. Unless the juvenile judge finds specific mitigating reasons not to impose the adult sentence, the law requires that this be done. It is clear from the legislative history surrounding the passage of this law that a presumption exists for imposing the stayed adult sentence should the juvenile violate the conditions of his/her juvenile disposition.

The Minnesota Legislature, while reserving the decision of executing the previously stayed adult sentence to the juvenile court judge, obviously felt that it was establishing a "one last chance or you're out" philosophy through creating the EJJ law. The intent behind the law is to give a juvenile offender

one last chance at correcting their criminal behavior within the confines of the juvenile court's supervision. The stayed adult prison sentence is designed to serve as a wake-up call. It acts as a club over the juvenile's head to insure that the juvenile adheres to the juvenile court sanctions imposed and engages in no further criminal activity. Those juveniles who fail to conform to the conditions of their juvenile disposition or who commit new crimes should be held accountable for their actions. Imposing the previously stayed adult sentence will hold such offenders appropriately accountable in these cases.

In practice, most EJJ designated juveniles who have violated the requirements of their juvenile court dispositions have had an adult court sanction imposed. In 1995 and 1996, of the 341 EJJ designated offenders in Minnesota, 49 (or 14%) had their adult sentence executed. However, of these same 49 juveniles, only 18 (or 37%) were sent to the state prison system. While most of the offenders who have violated the sanctions of their juvenile disposition are, therefore, receiving an adult sanction, some may not be receiving the same adult sanction which was originally held over their head. This remains an area of concern which will be watched closely in upcoming years in Minnesota.

Attached as Appendix D are a number of charts containing statistics related to juveniles either designated as EJJ offenders or prosecuted as adults under Minnesota's revised juvenile code.

### **CONCLUSION**

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 to these changes 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,<sup>3</sup> 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.

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 E 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 this information concerning the major revision of Minnesota’s juvenile justice system will provide those of you going through a similar process with some ideas and helpful information. If you would like any more information or input regarding Minnesota’s experience in revising its juvenile code or a summary of the appropriate role of prosecutors in this process, please contact James C. Backstrom, Dakota County Attorney, 1560 West Highway 55, Hastings, Minnesota, 55033-2392, Phone: (612) 438-4438.

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<sup>3</sup> A bill is currently pending before the 1998 Minnesota Legislature to expend the opportunities to obtain adult court jurisdiction over juveniles charged with certain serious and violent juvenile crimes and for multiple repeat property offenders.