



**Blended Sentencing
in Minnesota:
On Target for Justice
and Public Safety?**

Blended Sentencing in Minnesota: On Target for Justice and Public Safety?

An Evaluation

By

Fred L. Cheesman II, PhD, Project Co-Director

Thomas Cohen (2000-2001)

Denise Dancy

Matthew Kleiman, PhD

Nicole Mott, PhD

National Center for State Courts

Heidi Green, Project-Co-Director

Minnesota Supreme Court

State Court Administrator's Office



**Office of Juvenile Justice
and Delinquency Protection**



© 2002 The National Center for State Courts

This document was developed by The National Center for State Courts under a grant from the State Justice Institute (No. SJI-00-N-003). The points of view expressed do not necessarily represent the official position or policies of The National Center for State Courts, U.S. Department of Justice, OJJDP, or the State Justice Institute.

Advisory Group

Honorable Pamela Alexander
Minnesota Fourth Judicial District

Donna Bishop
College of Criminal Justice
Northeastern University

Mark Carey
Minnesota Department of Corrections

Leonardo Castro
Hennepin County Public Defender's Office

Deb Dailey
Minnesota State Court Administration

Sue Dosal
Minnesota State Court Administrator

Valerie Jensen
William Mitchell School of Law

Thomas Johnson
Council on Crime and Justice

John Kingerey
County Attorney's Association

David Knutson
Hennepin County Public Defender's Office

Honorable Joan E. Lancaster
Associate Justice
Minnesota Supreme Court

Honorable Charles LeDuc
Minnesota Ninth Judicial District

Janet Marshall
Minnesota State Court Administration

Honorable Mary Murphy
Minnesota State Representative

Honorable Jane Ranum
Minnesota State Senator

Honorable Gerard Ring
Minnesota Third Judicial District

Kathryn Santelmann
Ramsey County Prosecution Division

Emily Shapiro
Institute on Criminal Justice

Honorable Rich Stanek
Minnesota House of Representatives

John Stuart
Minnesota State Public Defender's Office

Blended Sentencing in Minnesota: On Target for Justice and Public Safety?
An Evaluation

Acknowledgments

This project benefited immeasurably from the advice and guidance of many individuals.

Our first thanks go to the many policy makers in Minnesota who participated in our advisory group meetings. Their advice and suggestions were critical to outlining the policy issues to be addressed in the study, and untangling the sometimes confusing and contradictory data results.

We also wish to acknowledge Prof. Donna Bishop (Northeastern University), who, in her role as project consultant, was an immensely valuable resource and source of guidance at crucial junctures during the course of the project, from project design and selection of variables through the analysis and interpretation of results. Prof. Charles Ostrom (Michigan State University) provided critical advice on the multivariate analyses and selection modeling as well as other aspects of the analysis. Neal Kauder (VisualResearch, Inc.), also an advisor to the project, helped design several of the graphics contained in the report.

We also wish to acknowledge the valuable contributions of our National Center of State Courts colleagues. Neil LaFountain assisted with data collection and data base issues. Toni Knorr and Lavolia Duncan assisted with project administration and manuscript preparation. This publication also benefited from the careful editing of Lorie Gomez. Brian Ostrom and Brenda Uekert kindly contributed their time to read the draft project report and made immeasurably helpful suggestions along the way.

In addition, we acknowledge all those who contributed to this project at the Minnesota Supreme Court, State Court Administrator's Office. We were fortunate to have able and dedicated data collectors on the project team including: Nicole Schmidt, Lisa Harper, and the ever enthusiastic, Meg Kuhlenkamp. Sue Carter designed our data collection screens and access databases with her usual expertise and efficiency. Janet Marshall generously (and patiently) shared her knowledge about the history of the legislation and its intentions. Deb Dailey contributed so many helpful suggestions to both the data collection process and the drafts of the text that we remain in awe of her many talents. And we thank Sue Dosal, who offered support and encouragement from the very start of the project.

The support of the State Justice Institute (SJI) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP) must be recognized. In particular, the encouragement and monitoring provided by Sandy Thurston (SJI) and Janet Chiancone (OJJDP) saw the project through to a happy conclusion. The National Center for State Courts and the Minnesota Supreme Court thank SJI and OJJDP for recognizing the need to document and to evaluate the changes in juvenile sentencing that have occurred since the introduction of blended sentencing in Minnesota.

Table of Contents

Acknowledgements.....	E-1
Executive Summary	E-6
Central Finding	E-6
Project Overview	E-8
Findings.....	E-10
Part I: Differentiating EJJs and Adult Certifications from Other Juveniles	E-11
Motioned and Conventional Juveniles.....	E-11
Intended Differences.....	E-11
Other Differences.....	E-11
Conclusions.....	E-12
EJJs and Adult Certifications.....	E-13
Intended Differences.....	E-13
Other Differences.....	E-13
Conclusions.....	E-14
Part II: Case Processing After the Dispositional Alternative Has Been Determined	E-14
Juvenile Dispositions and Adult Sentences	E-14
Recidivism	E-15
Part III: Policy Implications.....	E-15
Chapter 1: Introduction.....	1
Purpose of the Evaluation	5
Figure 1-1: Relationships Between Dispositional Alternatives	7
Overview of the Selection Process for Dispositional Alternatives in Minnesota.....	10
Evaluation Design and Organization of the Report	11
Benefits of the Evaluation.....	13
NCSC/MSC Evaluation Partnership.....	13
Chapter 2: Motioning - The County Attorney's Decision.....	14
2.1. Introduction.....	14
2.2. Analysis Variables and Data Sources	15
Table 2-1.: Analysis Variables.....	16
2.3 Profiles of Motioned and Conventional Juveniles	19
Table 2-2: Comparison of Motioned and Conventional Juveniles	19
2.3.1. Conventional Juveniles	21
2.3.2. Motioned Juveniles	22
2.4. Factors Influencing the Probability of Motioning	23
Table 2-3: Factors Related to Motioning	24
2.4.1. Intended Differences.....	25
Age.....	25
Figure 2-1: Probability of Being Motioned or Direct Filed by Age	25
Current Offense.....	26
Prior Offenses	27
Figure 2-2: Probability of Being Motioned or Direct Filed by Offense	27
Prior Out-of-Home Placements	27

2.4.2. Other Differences.....	27
Sociodemographic	27
Type of Offense and Judicial District.....	28
Processing.....	30
2.5. Offender Scenarios.....	30
Figure 2.3: Probability of Motioning or Direct File by District and Age	32
Figure 2.4: Probability of Motioning or Direct File by District and Age for Property.....	33
2.6. Conclusions.....	33
Chapter 3: Dispositional Alternatives - The Negotiated Decision.....	37
3.1. Introduction.....	37
Figure 3-1 Distribution of Sample by Processing Pathways to Dispositional Alternatives	38
3.2. Analysis Variables	39
3.3. Profiles of Dispositional Alternatives.....	41
Table 3-1: Comparison of Dispositional Alternatives	41
3.3.1. EJJ Disposition.....	43
3.3.2. Adult Certifications.....	44
3.3.3. Motioned Juveniles Disposed as Juveniles	45
3.4. Factors Influencing the Probability of Dispositional Alternatives	47
Table 3-2. Factors Related to Selection of Dispositional Alternatives.....	48
3.4.1. Intended Differences.....	48
Age.....	48
Figure 3-2. Probability of Dispositional Alternatives by Age	49
Current Offense.....	49
Figure 3-3: Probability of Dispositional Alternatives by Offense Seriousness Score	50
Figure 3-4: Offense Type of Dispositional Alternatives.....	51
Figure 3-5: Probability of Dispositional Alternatives by Types of Offense	52
Prior Offenses	56
Prior Out-of-Home Placements.....	56
3.4.2. Other Differences.....	57
Sociodemographic	57
Processing.....	58
3.5. Offender Scenarios.....	60
Figure 3-6: Probability of Dispositional Alternatives by Age.....	61
Figure 3-7: Probability of Dispositional Alternatives by Age for Scenario Two	62
3.6. Conclusions.....	62
Chapter 4: Case Processing After Selection of the Dispositional Alternative.....	68
4.1. Introduction.....	68
4.2. Juvenile Court Dispositions	69
Figure 4-1: Type of Juvenile Disposition by Dispositional Alternative	70
4.3. Adult Sentences	71
Figure 4.2: Type of Sentence for Adult Certifications	71
Figure 4.3: Percent Receiving Probation or Community-based Corrections.....	73
Figure 4.4: Percent Receiving Commitment to State Facility to Dispositional Alternative....	74
4.4. Services Intended to be Provided to EJJs	74
4.5. Preliminary Recidivism Results.....	75
Figure 4-5: Preliminary Recidivism Results.....	75

4.6. Elements of a Robust Design to Measure EJJ Recidivism	78
4.7. Conclusions.....	80
Chapter 5: Policy Implications.....	82
5.1. Introduction.....	82
5.2. A Review of the Findings	82
Geography.....	82
Race.....	83
Targeting of EJJ and Adult Certification	86
5.3. Is There a Problem with the Use of Dispositional Alternatives in Minnesota?.....	88
5.3. Policy Options.....	92
Policy Option One.....	94
Policy Option Two.....	94
Policy Option Three.....	95
Policy Option Four.....	95
Policy Option Five	96
Policy Option Six.....	97
Appendix A: Weights Applied to Observations	98
A.1. Weights for the Motioning Analysis.....	98
Table A-1: Data Used for Weighting.....	99
A.2. Weights for Analysis of Dispositional Alternatives	103
Appendix B: Estimating the Motioning Model	105
B.1. Estimating the Model	105
Table B-1: Logistic Regression Estimates.....	106
B.2. The Estimated Probabilities	107
Table B-2: Comparison of Actual to Predicted Classifications	108
B.3. Interpretation	108
Table B-3: Odds Ratios.....	110
Table B-4: Discrete Change in Probability	110
Table B-5: Probability of Being Motioned or Direct Filed.....	111
B.4. Relative Contribution of Statistically Significant Factors.....	112
Table B-6: Significant Independent Variables.....	112
Appendix C: Estimating the Dispositional Alternative Model	114
C.1. Estimating the Model	114
Table C-1: Multinomial Logit Estimates	115
Table C-2: The Hausman Test of Irrelevant Alternatives.....	116
Table C-3: Wald Tests for Combining Outcome Categories.....	117
Table C-4: Wald Tests for Independent Variables	118
Table C-5: Comparison of Actual to Predicted Classifications	120
C.2. The Estimated Probabilities	121
Table C-6: Estimated Probabilities by Disposition Category	122
C.3. Interpreting the Results	122
Table C-7: Odds Ratios for All Possible Contrasts	124
Table C-8: Discrete Change in Probability of Disposition Category by Change	125
Table C-9: Probability of Disposition Category by Offense Seriousness Score and Age	125
References.....	127

Executive Summary

Central Finding

Blended sentencing in Minnesota (referred to as “Extended Jurisdiction Juvenile” or “EJJ”) emerged as a political compromise between those who wanted to emphasize public safety, punishment, and accountability of juvenile offenders, and those who wanted to maintain or strengthen the traditional juvenile justice system. The description of EJJ by the task force that recommended its creation captured the essence of the compromise: “It will give the juvenile *one last chance* at success in the juvenile justice system, with the threat of adult sanctions as an incentive not to re-offend.”

EJJs are initially adjudicated and sentenced as juveniles though they receive all adult criminal procedural safeguards, including the right to a jury trial. Juveniles disposed EJJ receive a juvenile court disposition and a stayed adult prison sentence, based upon the Minnesota Sentencing Guidelines for adult felons. The jurisdiction of the juvenile court lasts until age twenty-one, hence the name “extended jurisdiction” juvenile. A court executes the stayed criminal sentence only if the EJJ fails in juvenile probation.

The addition of EJJ to the traditional dispositional alternatives of (1) conventional juvenile dispositions and (2) waiver to adult criminal court (known as “adult certification” in Minnesota) created a triad of dispositional alternatives available to juvenile court judges. The intent of the 1994 Juvenile Crime Act was that each dispositional alternative would target a distinct type of offender, distinguishable from one another primarily on the basis of age, seriousness of the current offense, and prior offense record. Conventional juveniles would be the youngest offenders, charged with the least serious current offenses, and have the least serious

prior records. EJJ and adult certification were clearly targeted at older offenders charged with serious offenses and possessing more extensive prior records. EJJ's were to be distinguished from adult certifications on the basis of age and "public safety" criteria (primarily offense seriousness and prior record). Adult certification cases were also expected to be more culpable for their crimes and to be less amenable to juvenile programming than EJJ's. In short, adult certification cases were to be the "worst of the worst" while EJJ's were to be "less bad of the worst."

The viability of EJJ as an intermediary between conventional juvenile dispositions and adult certification is contingent on whether it is effectively targeting its intended offender population, which can only be determined in relationship to whether the other dispositional alternatives are effectively targeting their intended offender populations. If juveniles designated EJJ are not distinguishable from conventional juveniles, EJJ may be "widening-the-net" by subjecting juveniles who traditionally would have been processed as conventional juveniles to possible transfer to the (adult) criminal justice system. If EJJ's are not distinguishable from adult certifications, public safety may be compromised by the placement of serious offenders in the community who otherwise might have been certified to the criminal court.

It is important to note that EJJ's and Adult Certifications are relatively rare occurrences. The Minnesota District Court disposes of approximately 10,000 juvenile felons annually. Of these 10,000 felons, about 2,400 meet the presumptive certification criteria that identifies a serious juvenile offender. Yet only about 100 juveniles are adult certified annually (about 1% of all juvenile felons) and about 300 juveniles receive an EJJ sentence (about 3%). Given the rareness of these events, and the breadth of the presumptive certification criteria, questions arose

as to what additional criteria, were being used by the juvenile justice community to motion juveniles and determine whether they were to be disposed as an EJJ or adult certified.

The evaluation team at the National Center for State Courts, in conjunction with staff from the Minnesota Supreme Court conducted a thorough, systematic and multi-method inquiry into a key question: *Are each of the three dispositional alternatives being used effectively to target their intended offender populations?* By posing this question we were able to determine whether consistent criteria were being used to distinguish adult certifications from EJJ's from offenders receiving a traditional juvenile sentence. We collected data on a sample of juvenile cases disposed during 1997 and 1998 to answer our research questions. The inquiry included evaluating a variety of offender and case characteristics to look for intended and other differences between offenders receiving the different dispositional alternatives. The evaluation also examined preliminary data to assess whether the sentences of adult certifications and the dispositions of EJJ's and conventional juveniles constituted the "continuum of control" intended by the task force and whether an EJJ disposition deterred future re-offending.

Overview of the Disposition Selection Process in Minnesota

A two-step process determines which dispositional alternative juveniles aged 14 years or older and charged with a felony will receive. Motioning is the first step towards receiving an adult certification or EJJ. A county attorney can file a motion for EJJ¹ or adult certification or "direct file" for EJJ² (henceforth referred to as "motioning").³ The small fraction of juvenile

¹ If the defendant is motioned EJJ, the burden of proof for the EJJ designation remains with the county attorney. Offenders motioned for EJJ must be at least 14 years of age and can be charged with either presumptive (offense punishable by a minimum sentence of a commitment to prison under the Adult Sentencing Guidelines) or non-presumptive offenses.

² Offenders who meet the presumptive certification criteria can be designated EJJ automatically, without any hearing or court proceeding, at the discretion of the county attorney (a "direct-filed EJJ"). The presumptive certification criteria are:

1. The juvenile was 16 or 17 years old at the time of the offense; and

offenders selected for motioning (“motioned juveniles”) form the pool from which EJJ and adult certifications will ultimately be selected. By default, juveniles who are not motioned constitute the “conventional juvenile” group.

Second, motioned juveniles are sentenced to a dispositional alternative after a hearing to determine whether they meet the appropriate statutory criteria.⁴ Offenders direct filed or motioned for EJJ or adult certification, can receive one of three types of dispositions: an EJJ disposition (juvenile disposition and stayed adult sentence), an adult certification (and a subsequent sentence in adult court) or a traditional juvenile sentence. The later group we refer to as “motioned-disposed” juveniles.

The motioning and dispositional decisions are made at different stages of processing by two different, though overlapping sets of actors. The critical initial motioning decision is almost entirely in the hands of the county attorney. Selection of the final dispositional alternative, however, is usually negotiated between the county attorney and defense lawyers, subject to the approval of the judge.

Offenders can also be designated EJJ through failed adult certification. When a certification hearing fails to affect a transfer to the criminal court, two outcomes are possible. First, if the offender was convicted of a presumptive offense, the court can automatically place the juvenile on EJJ status, denying the certification motion. Second, for both presumptive and

2. The alleged offense is (1) punishable by a minimum sentence of a commitment to prison under the Adult Sentencing Guidelines, and/or (2) a felony involving use of a firearm.

The burden of proof against EJJ designation status rests with the defense when a defendant is direct filed. Though fully three-quarters of disposed EJJs meet the presumptive certification criterion, motioning EJJ is more common because the motioning often results from plea negotiations when the defendant is seeking to avoid being adult certified.

³ Another alternative is also possible under Minnesota law. A county attorney may direct file in adult court a juvenile, age 16 or 17, charged with first-degree homicide. This occurs rarely and therefore was not examined.

⁴ Two criteria determine whether a juvenile case involving a juvenile aged 14 or older and charged with a felony offense can be disposed EJJ: (1) Whether the juvenile meets the criteria for presumptive certification to criminal court; or (2) whether “public safety” is served by having the juvenile sentenced as an EJJ.

non-presumptive offenders, the county attorney can “remove” the certification motion.⁵ If the certification motion is removed, EJJ status can still be conferred if the county attorney motions for an EJJ disposition.

Because motioning decisions and selections of dispositional alternatives are made at different stages of juvenile court processing by different sets of actors, we investigate each decision separately. We also recognize, however, that the two steps are not independent because motioning is a necessary though not sufficient, prerequisite for EJJ or adult certification.

Findings

The findings of the evaluation are summarized in three parts:

- *Part I: Differentiating EJJs and Adult Certifications from Other Juveniles* focuses on the two-step process (motioning and sentencing) of assigning dispositional alternatives. The factors expected to influence the probability of motioning and the factors that influence the selection of dispositional alternatives were examined, including (1) factors intended by the original legislation (age, current offense, prior offense record, culpability, and amenability to juvenile programming) to influence decisions and (2) other factors that previous research had found predictive of dispositions (offender sociodemographic characteristics and case processing factors).
- *Part II: Case Processing After the Dispositional Alternative Has Been Determined* examines *preliminary* data comparing (1) specific dispositions and sentences as well as (2) the recidivism of offenders receiving different dispositional alternatives.

⁵ For example, certification motions may be removed on the basis of evidentiary deficiencies such as the loss of a witness or crucial evidence, or an inability to introduce evidence. More often than not, they are removed as part of a plea bargain.

- *Part III: Policy Implications* discusses the policy implications that follow from our major findings.

Part I: Differentiating EJJs and Adult Certifications from Other Juveniles

Motioned and Conventional Juveniles

Intended Differences: Most of the intended factors (age, the current offense, offender culpability, and the offender's responsiveness to juvenile programming), with the exception of prior offense history, distinguished motioned from conventional juveniles. Consistent with intentions, the odds of motioning increased:

- With every year of age.
- As offense seriousness increased, if there was more than one charge or if there was an adult codefendant (culpability factors), and if the current offense involved a firearm or victim injury.
- If there was one or more out-of-home placements prior to the current offense (an indicator of failure to respond to juvenile programming).

Other Differences: As well as the intended factors, other factors influenced the probability of motioning. Whether the offender had been detained prior to disposition, geography (i.e., the judicial district in which the case was disposed), the offender's race, and whether the offender lived with at least one parent were influential.

- A pre-dispositional out-of-home placement⁶ on the current case was the second most important predictor of motioning, consistent with a long line of research showing that pre-dispositional detention is associated with more punitive dispositions (see, e.g., McCarthy and Smith, 1986).

⁶Such placements would principally include secure detention but could also include other types of out-of-home placements (e.g., emergency placement with a social welfare agency).

- Person offenders from Districts Four (Hennepin County) and Nine were much more likely to be motioned than person offenders from any other district. Property offenders from District Nine were much more likely to be motioned than property offenders from any other district. Additionally, drug offenders from Hennepin were much more likely to be motioned than drug offenders from any other district.
- Race and whether the offender lived with at least one parent, though not as influential as many other factors, affected the odds of motioning. Asian American juveniles were the most likely to be motioned (probably reflecting gang involvement) followed by Whites and Hispanics, Native Americans, and, finally, African Americans. Unexpectedly, juveniles living with at least one parent were slightly more likely to be motioned than juveniles who did not live with either parent.

Conclusions: Prosecutors motioned primarily on the basis of intended factors (age, the current offense, offender culpability, and the offender’s responsiveness to juvenile programming), but other factors (especially whether the juvenile was detained, geography, and race) also influenced the probability of motioning.

The conventional juvenile disposition seems to be targeting its intended offender population. Conventional juveniles were the youngest, had the least serious current offense-related factors, showed the least culpability, and had the least extensive programming histories among the dispositional alternatives. *Because motioned and conventional juveniles differed according to intended factors, we found little evidence of unintended widening-of-the-net.*

EJJs and Adult Certifications⁷

Intended Differences: Only one intended factor (prior offense record) strongly distinguished EJJs from adult certifications in the intended direction. Age and current offense factors (offense seriousness and adult codefendant, a culpability factor), also distinguished the two but were much less influential. Most current offense-related factors failed to distinguish the two dispositional alternatives, including number of charges (a culpability factor), whether the offense involved a firearm or a weapon other than a firearm, victim injury, and type of offense. Thus, person offenders, offenders that used firearms, and offenders that injured a victim were just as likely to be EJJs as to be adult certifications. Significantly and unexpectedly, the probability of adult certification was found to increase as the seriousness of the current offense decreased, suggesting that this alternative is not being targeted as intended. Number of prior out-of-home placements, which reflects responsiveness to juvenile programming, was highly significant but not in the expected direction. We found prior out-of-home placements did not increase a juvenile's chance of receiving an adult certification, as opposed to an EJJ disposition.

Other Differences: Geography and race influenced the odds of adult certification rather than an EJJ disposition more than any intended factor (that predicted in the intended direction) except prior offense record. Compared to any other district, cases disposed in District 5 were much more likely to be adult certified than disposed EJJ. Cases involving African American juveniles were much more likely to be adult certified than disposed EJJ than cases involving any other race. Asian Americans were also more likely to be adult certified rather than disposed EJJ than any other race except African Americans.

⁷ Our analysis also compared motioned-disposed juveniles with EJJs and adult certifications. While this comparison was not as pertinent as the EJJ-adult certification comparison, we generally found that the motioned-disposed juveniles were similar to conventional juveniles, being younger, less serious in their offenses, and African American. They were also more likely to be female and from District 5.

Besides geography, other processing factors also influenced the odds of an adult certification rather than an EJJ disposition. A pre-dispositional out-of-home placement, highly influential on the probability of motioning, had no influence on the probability of receiving an adult certification or EJJ. Likewise, the probability of motioning did not influence the type of disposition received, suggesting that the decision to motion and the selection of a disposition are independent processes. Unexpectedly, a juvenile offender under court-ordered supervision was almost twice as likely to receive an EJJ disposition rather than adult certification than a similar juvenile not under supervision.

Conclusions: Both intended and other factors influenced the likelihood of a juvenile receiving an adult certification rather than an EJJ disposition, although the influence of the unintended factors was generally stronger. Further, several intended factors, while significant, did not predict in the intended direction. *Since most current offense and offender culpability factors had little or no influence on the probability of adult certification rather than an EJJ disposition, we conclude that adult certification and EJJ are not targeting their intended offender populations. In a reversal of intentions, EJJ's are apparently the "worst of the worst" while adult certifications are the "less bad of the worst."*

Part II: Case Processing After the Dispositional Alternative Has Been Determined

Juvenile Dispositions and Adult Sentences

While the majority of offenders from each dispositional alternative received formal probation as their sanction, conventional juveniles were the most likely to receive this disposition. Conversely, EJJ's and motioned-disposed juveniles were more likely to be incarcerated than conventional juvenile offenders. EJJ's were also more likely to be placed in community-based correctional facilities than conventional juveniles. Even given the latter

finding, the majority of offenders from each dispositional category continue to receive traditional “in” (incarceration) or “out” (probation) sanctions, despite subsidy funding intended to increase dispositional options.⁸

Adult certifications were both more likely to be incarcerated and to be placed on probation than EJJ. Probation for adult certifications was almost always accompanied with jail time. In general, it would appear that adult certifications receive harsher sanctions than EJJ. Incarceration rates by themselves suggest that conventional juvenile, EJJ, and adult certification dispositions appear to constitute a “*continuum of control*” as intended. However, our preliminary recidivism data suggests that this apparent continuum of control may not be as effective as intended.

Recidivism

Preliminary data indicated that EJJ were less likely to recidivate than offenders from the other dispositional alternatives. However, significant limitations of our measures of recidivism preclude any definitive statements about the relative rate of recidivism of EJJ. We described the configuration of a more robust study of recidivism designed to overcome these limitations.

Part III: Policy Implications

Three findings from this study have important policy implications for juvenile sentencing in Minnesota:

⁸We were able to obtain proposals for EJJ programming submitted by participating jurisdictions to the Minnesota Department of Corrections, indicative of the county’s intended spending/juvenile programming plan for 1999-2001. Basic services offered by virtually all of the counties include drug testing and treatment, psychological counseling, and various levels of supervision. In addition, virtually all of the counties proposed services for minorities. A number of counties also proposed additional services such as restitution, victim services, and transitional programming. Juveniles in some counties were offered educational services, vocational training, and/or independent living skills. The services funded by the subsidy emphasized supervision more so than juvenile programming, but this varied by geography.

1. *The judicial district where the case was disposed influenced the probability of motioning and the type of dispositional alternative received: adult certification, EJJ, or juvenile.*
2. *The offender's race influenced the probability of motioning and the type of dispositional alternative received.*
3. *The EJJ disposition and adult certification are not targeting their intended offender populations.*

Whether the influence of geography on the selection of dispositional alternatives is perceived to be a problem depends on whether one adheres to the fairness standards of the juvenile or the adult criminal court. The former promotes unique dispositions that best serve the interests of the child, while the latter promotes predictability and proportionality for similarly situated offenders. Regardless of perspective, however, the influence of race on the selection process is a problem that requires remediation. It is less clear whether the failure of the EJJ and adult certification dispositional alternatives to effectively target their intended offender populations is problematic. At the very least, our findings suggest that it might be timely to reconsider whether the current configuration of dispositional alternatives (adult certification, EJJ, and juvenile) is serving the best interests of juveniles, the juvenile justice system, and public safety. In particular, we suggest that greater clarification as to what kinds of juvenile offenders should be intended for adult certification, as opposed to the blended EJJ sentence, may help lessen the geographic and racial influences on these disposition alternatives.

We recommend that a forum be provided for legislators, juvenile justice system personnel, and the general public to debate whether our major research findings constitute problems for juvenile sentencing in Minnesota.

While divergent views on this subject are to be expected, the debate would be healthy and will hopefully provide direction for future reform of Minnesota's juvenile justice system.

If the consensus of our proposed forum participants is that (1) geographic and racial variation in the use of the dispositional alternatives and/or (2) the failure of the adult certification and the EJJ disposition to effectively target their intended offender populations are problems, what policies might be undertaken to ameliorate them? We have identified the following policy options that may be among the policy options considered:

- **Policy Option One:** *Conduct education programs for juvenile justice system personnel about the major findings of this research.*
- **Policy Option Two:** *Continued research on the causes of racial and regional variation in the use of the dispositional alternatives and the failure of adult certification and EJJ to effectively target their intended offender populations.*
- **Policy Option Three:** *Development of systematic procedures to monitor (1) the influence of race and judicial district on the selection dispositional alternatives and (2) whether adult certification and EJJ are targeting their intended offender populations.*
- **Policy Option Four:** *Adopt strategies to discourage pleas to adult certification by minor offenders.*
- **Policy Option Five:** *Develop means to better distinguish offenders appropriate for adult certification from those appropriate for EJJ.*
- **Policy Option Six:** *Adoption of voluntary or mandatory dispositional guidelines for EJJ and adult certification.*

Chapter 1: Introduction

In 1994, the Minnesota legislature passed reform legislation that changed the character and the practice of sentencing serious juvenile offenders in that state. One of the cornerstones of the reforms was the introduction of “blended sentencing”⁹ as an alternative to the more traditional dispositional alternatives of waiver to criminal court¹⁰ (referred to as “adult certification” in Minnesota) and conventional juvenile court dispositions.

The catalyst for Minnesota’s blended sentencing statute was the rise in violent juvenile crime that the state (similar to the rest of the country) experienced during the 1980s and early 1990s. Between 1980 and 1991, the number of juveniles arrested for serious crimes increased by 11 percent, and, by 1991, juveniles accounted for 43 percent of all violent crime arrests.

Reform commenced in 1992 when the legislature created the “Minnesota Task Force on the Juvenile Justice System” (Task Force). The Task Force was authorized to examine the juvenile justice system, analyze how adult certification was currently being used, and suggest possible reforms; it concluded that the juvenile justice system needed to focus on three basic goals (Santelmann and Lillesand, 1999):

- (1) A stronger response to serious and repeat juvenile crime;
- (2) A continuum of juvenile justice system responses to juvenile crime based on the seriousness of the offense, the age of the offender, and the threat posed to public safety, with an increase in sentencing alternatives for juvenile offenders; and

⁹ While there are variety of models of blended sentencing (see Sickmund, Snyder, and Poe-Yamagata, 1997), all share the characteristics that they involve a combination of juvenile and adult sentences and that they are targeted at older, more serious and violent juvenile offenders.

¹⁰ Transfer of jurisdiction of the case from juvenile court to adult criminal court (henceforth “criminal court”).

- (3) Strong leadership by the department of corrections in developing statewide juvenile justice policy and in taking fiscal and program responsibility for serious juvenile offenders (p. 1305).

To realize these goals, the Task Force recommended substantial changes to Minnesota's juvenile justice statute. The recommendations focused on changing the state's adult certification laws and on creating a new dispositional alternative (blended sentencing) for certain types of juvenile offenders. Eventually, this new dispositional alternative became known as "Extended Jurisdiction Juvenile" or EJJ (Santelmann and Lillesand, 1999). The legislature adopted the Task Force's blended sentencing recommendations in 1994.

The most significant legislative changes resulting from the new law (M.S. 260B.130) affect the sentencing of youths as adults and as juveniles. Recognizing that adolescence is a developmental continuum requiring a corresponding continuum of controls, the Task Force rejected the binary quality of previous adult certification legislation as a poor fit to what is currently known about young offenders (Feld, 1995a). The Task Force recommended a new "transitional component between the juvenile and adult systems" which would become known as EJJ. This new alternative expanded the "dispositional menu" available to juvenile court judges by providing "new dispositional options for juvenile court judges facing juveniles who have committed serious or repeat offenses" (Advisory Task Force, 1994). The reforms created a more graduated juvenile justice system incorporating a continuum of controls from ordinary juvenile delinquency through extended juvenile court jurisdiction to adult prosecution based on age, current offense, prior offenses, offender culpability, and the offender's responsiveness to juvenile programming.

Juvenile court judges were authorized by the new legislation to impose both a juvenile disposition and a stayed sentence to the adult criminal corrections system in EJJ cases. The

stayed sentence is executed only if the juvenile fails to meet the conditions of the juvenile disposition. To enhance offender accountability and to prevent older juveniles from being certified simply because of their age, the 1994 legislation extended the juvenile court's jurisdiction in EJJ cases through age 21.¹¹

Each of the triad of dispositional alternatives (i.e., EJJ, adult certification, and conventional juvenile dispositions) was designed to target a distinct type of offender. Feld (1995a), who was a member of the Task Force, describes the types of youth that the framers of the 1994 reforms had in mind for each of the three dispositional alternatives.

Assuming that the “worst of the worst” will be certified, the mandatory EJJ provisions subject the “less bad of the worst” to more stringent controls than those ordinarily available in juvenile courts. Effectively, a decision not to certify a presumptive-certification¹² youth entails a determination that the youth is “amenable to probation” under the juvenile court's strengthened EJJ provisions (p. 1044).

The 1994 legislation provides additional guidance for selecting offenders appropriate for adult certification. For juveniles aged 14 to 17 charged with any felony offense, the county attorney must prove by “clear and convincing evidence” that protection of “public safety” requires the juvenile's transfer to criminal court. For youths aged 16 or 17 at the time of the offense, charged with a crime requiring presumptive commitment to prison under the Minnesota Sentencing Guidelines or who employed a firearm during the commission of a felony, there is a *presumption* of transfer to criminal court (referred to as “presumptive offenders”). While the prosecutor (referred to as a “county attorney” in Minnesota) bears the burden of proof in an “ordinary” certification proceeding, the presumption shifts the burden of proof to older juveniles

¹¹ Previous to the 1994 legislation, the maximum age of jurisdiction for the juvenile court was 18.

¹²The presumptive certification criteria are:

1. The juvenile was 16 or 17 years old at the time of the offense; and
2. The alleged offense is (1) punishable by a minimum sentence of a commitment to prison under the Adult Sentencing Guidelines, and/or (2) a felony involving use of a firearm.

charged with serious offenses to show by “clear and convincing” evidence that retaining their case in juvenile court serves “public safety.”

The 1994 legislation explicitly defined “public safety” as follows (MINN. STAT. § 260.125(2b)):

In determining whether the public safety is served by certifying a child to district court, the court shall consider the following factors:

- (1) the *seriousness of the alleged offense* in terms of community protection, including the existence of any *aggravating factors recognized by the sentencing guidelines*, the use of a firearm, and the impact on any victim;
- (2) the *culpability* of the child in committing the alleged offense, including the level of the child’s participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the sentencing guidelines;
- (3) the child’s *prior record of delinquency*;
- (4) the child’s *programming history*, including the child’s past willingness to participate meaningfully in available programming;
- (5) the adequacy of the *punishment or programming* available in the juvenile justice system; and
- (6) the dispositional options available for the child.

In considering these factors, *the court shall give greater weight to the seriousness of the alleged offense and the child’s prior record of delinquency than to the other factors listed in this subdivision.*

In summary, the framers of the 1994 reforms intended that conventional juveniles, EJJ, and adult certifications would be distinguishable from one another primarily on the basis of age (at the time of the offense), seriousness of the current offense, and prior record. Collectively, conventional juveniles would be the youngest, charged with the least serious current offenses, and have less serious prior records. The EJJ dispositional alternative and adult certification were clearly targeted at older offenders charged with serious offenses and possessing more extensive prior records. EJJ were to be distinguished from adult certifications on the basis of age and “public safety” criteria, primarily offense seriousness and prior record (adult certification cases were to be the “worst of the worst” while EJJ were to be “less bad of the worst”).

Other factors were also to distinguish EJJs from adult certifications. These factors were related to the culpability of the juvenile and the child's programming history. Adult certification cases were expected to be more likely to have played a leadership role in the crime (many juvenile crimes are committed in groups, as reported in Snyder and Sickmund, 2000) than EJJs. Further, adult certifications would be generally less amenable to juvenile programming than EJJs, on the basis of their programming histories.

Purpose of the Evaluation

The National Center for State Courts (NCSC) and the Minnesota Supreme Court (MSC), with funding from the State Justice Institute and the Office of Juvenile Justice and Delinquency Prevention, jointly conducted an evaluation that primarily focused on the process of selection of dispositional alternatives. Secondly, the evaluation also examined preliminary data on case outcomes, including specific juvenile dispositions and adult sentences, services provided to EJJs, and recidivism.

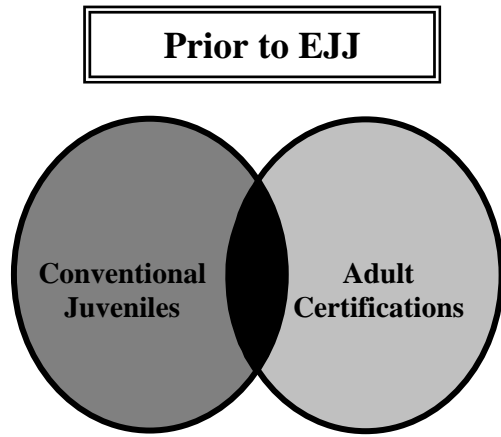
The primary purpose of the evaluation is to determine whether the alternatives are targeting their intended offender populations. Targeting is a key issue because of concerns about the impact of the 1994 reforms on public safety, racial disparities, and "widening-of-the-net"¹³ (Feld, 1995a). Public safety is a concern because EJJ could result in the retention of serious offenders in the juvenile justice system who would have been certified as adults prior to EJJ. There are also fears that EJJ could be a "back door" to prison for minority youth who are generally charged with more serious and violent offenses than white youth and thus could be disproportionately subjected to the EJJ disposition. It is also possible that minority juveniles could be presumptively certified at even greater rates than under the previous discretionary

¹³ "Widening of the net of social control" (Polk, 1984) occurs when a change in the juvenile or criminal justice system subjects individuals to supervision by the court who, without the change, would not have been subject to such supervision.

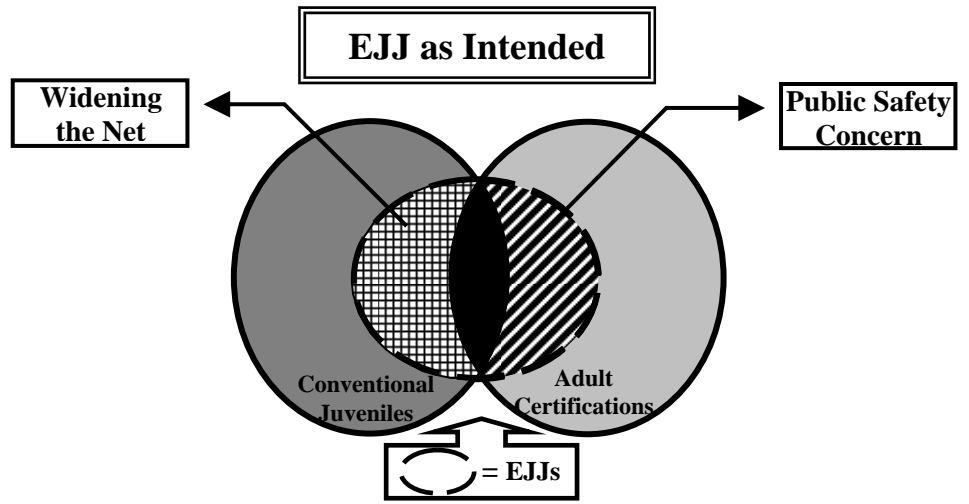
regime. Net widening is a concern because of the possibility that some juveniles would be designated EJJ who would have been processed as conventional juveniles if this dispositional alternative had not existed. Once designated as an EJJ, these juveniles would be at risk for an adult prison sentence should they commit a new offense or violate the terms of their probation.

The viability of EJJ as an intermediary between conventional juvenile dispositions and adult certification is contingent on whether it is effectively targeting its intended offender population, which can only be determined in relationship to whether the other dispositional alternatives are effectively targeting their intended offender populations. If juveniles designated EJJ are not distinguishable from conventional juveniles, EJJ may be “widening-the-net” by subjecting juveniles who traditionally would have been processed as conventional juveniles to possible transfer to the (adult) criminal justice system. If EJJs are not distinguishable from adult certifications, public safety may be compromised by the placement of serious offenders in the community who previously would have been certified to the criminal court. Thus, a thorough evaluation of EJJ entails examination of the complete triad of dispositional alternatives. These concepts are presented graphically in Figure 1-1.

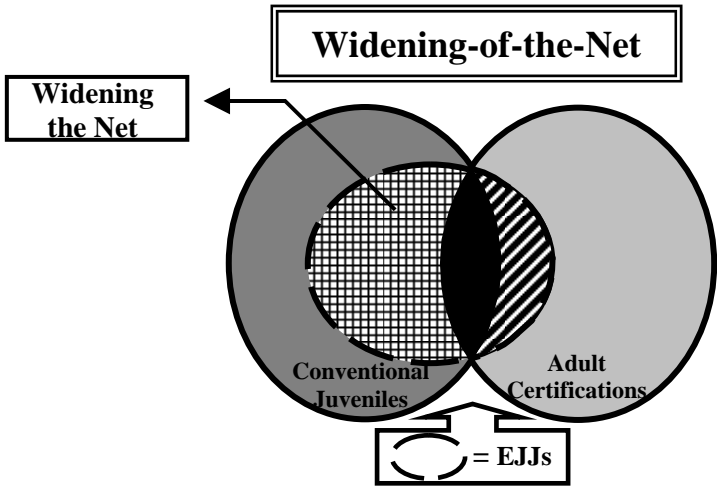
Figure 1-1: Relationships Between Dispositional Alternatives



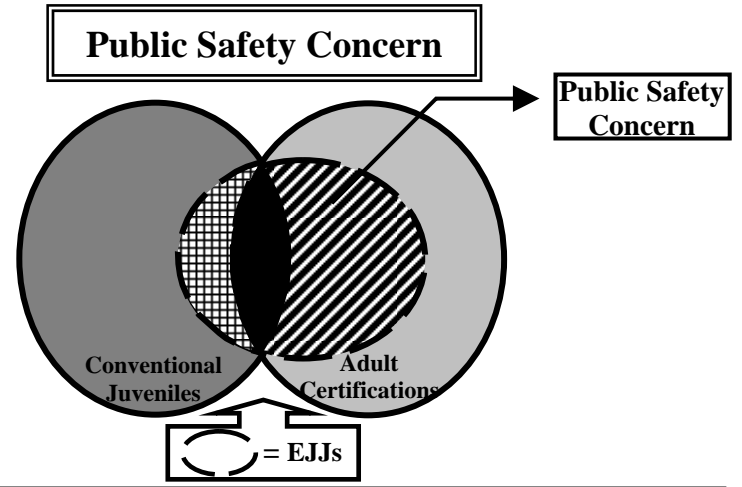
Ideally, conventional juveniles and adult certifications are selected from distinct populations. Judicial discretion must be exercised to decide best dispositional alternative for offenders in overlap.



EJJs are selected from both populations. Some juveniles that previously would have been certified are retained in the juvenile justice systems as EJJs. Other offenders that would have been disposed as a conventional juvenile receive enhanced supervision and services as part of EJJ disposition.



EJJs are selected predominantly from population of offenders that would have received conventional juvenile dispositions without EJJ. Offenders in cross-hatched area are, on the average, less serious than EJJs in "Intended" scenario, but are now subject to transfer to the adult correctional system – thus "widening-the-net."



EJJs are selected predominantly from population of offenders that would have been certified without EJJ. Offenders in diagonal area are, on the average, more serious than EJJs in "Intended" scenario and thus are a potential threat to public safety.

EJJ dispositions are relatively rare events; only about 3 percent of juvenile felony cases filed each year in the courts result in an EJJ disposition. Likewise, certification to adult court is also rare; approximately one percent of the juvenile felony cases filed in the courts result in a certification. The relatively infrequent use of these two relatively punitive dispositions suggests that they are used only after careful deliberation. Many juvenile court judges would agree with Feld's (1995a) sentiment that "Whether to waive a juvenile to criminal court for prosecution as an adult is the single most important sentencing decision that juvenile court judges make" (p. 1006).

We would expect that this apparently thoughtful and conservative use of EJJ and adult certification would increase the odds that they will successfully target their intended offender populations. Yet data collected from the courts early after the implementation of EJJ suggest that there is a mix of person offenders and lower-level property offenders among those disposed as EJJ or certified. Moreover, there are a surprisingly large number of first-time felons receiving an EJJ or certification disposition from juvenile court. This begs the question: Are there factors other than the severity of the current offense that impact whether a juvenile will receive an EJJ or certification disposition? If so, what are those factors?

Previous research on the capability of transfer practices to effectively target appropriate offender populations is not encouraging (e.g., Bishop and Frazier, 1991; Champion and Mays, 1991; Poulos and Orchowsky, 1994; McNulty, 1996). However, the addition of EJJ to juvenile court judges' dispositional menu may influence how effectively the two other dispositional alternatives target their intended offender populations. Will the addition of a third dispositional alternative act to further "rationalize" the use of adult certification by providing an alternative for

juveniles who are certified simply because of their age and other youth who are the “less bad of the worst” and who might yet be responsive to juvenile programming? Will the removal of these types of offenders from the population of offenders currently subject to adult certification enhance the chances that adult certification will effectively target the serious, “worst of the worst” offender for whom it was intended? Or, will the addition of a third dispositional alternative only complicate an already complex series of decisions, reducing the odds that any disposition will be able to effectively target its intended population of offenders? These possibilities must be investigated in a thorough evaluation.

The extent to which the three dispositional alternatives are effectively targeting their intended offender populations determines the viability of the new, expanded “dispositional menu.” Effective targeting requires that the selection of the dispositional alternatives be based on the factors intended by the 1994 legislation. Consequently, **the principal objective of this evaluation is to determine the extent to which intended and/or other factors influence the selection of dispositional alternatives.** To conduct this examination, a group of offenders, drawn from among 17,882 cases disposed in juvenile court during 1997 and 1998, was studied.

A secondary objective of this evaluation is to determine whether the sentences of adult certifications and the dispositions of EJJ's and conventional juveniles correspond to the “continuum of control” intended by the Task Force. The third objective of the evaluation was to assess whether an EJJ disposition deterred future re-offending (i.e., recidivism). The Task Force posited that the threat of a prison sentence would deter the juvenile from re-offending (“specific deterrence”¹⁴). In the words of the Task Force, “It (i.e., EJJ) will give the juvenile one last

¹⁴ *Specific* deterrence refers to the inhibition of criminal activity of the person being punished as the result of the imposition of that punishment. Specific deterrence is often contrasted with *general* deterrence that refers to the prevention of criminal acts in the population at large by means of the imposition of punishment on persons convicted of crime (Gottfredson and Gottfredson, 1988).

chance at success in the juvenile system, *with the threat of adult sanctions as an incentive not to re-offend*” (p. 32-33, emphasis and parenthetical explanation added).

Overview of the Selection Process for Dispositional Alternatives in Minnesota

A two-step process determines which dispositional alternative juveniles aged 14 years or older and charged with a felony will receive. First, a county attorney can file a motion for EJJ¹⁵ or adult certification or “direct file” for EJJ¹⁶ (henceforth referred to as “motioning”).¹⁷ The small fraction of juvenile offenders selected for motioning (“motioned juveniles”) form the pool from which EJJ’s and adult certifications will ultimately be selected. By default, juveniles who are not motioned constitute the “conventional juvenile” group.

Second, motioned juveniles are sentenced to a dispositional alternative after a hearing to determine whether they meet the appropriate statutory criteria.¹⁸ Offenders direct filed or motioned for EJJ but who are not disposed EJJ receive standard juvenile dispositions (“motioned-disposed” juveniles).

The motioning and dispositional decisions are made at different stages of processing by two different, though overlapping sets of actors. The critical initial motioning decision is almost

¹⁵ If the defendant is motioned EJJ, the burden of proof for the EJJ designation remains with the county attorney. Offenders motioned for EJJ must be at least 14 years of age and can be charged with either presumptive (offense punishable by a minimum sentence of a commitment to prison under the Adult Sentencing Guidelines) or non-presumptive offenses.

¹⁶ Offenders who meet the presumptive certification criteria can be designated EJJ automatically, without any hearing or court proceeding, at the discretion of the county attorney (a “direct filed EJJ”). The presumptive certification criteria are:

3. The juvenile was 16 or 17 years old at the time of the offense; and
4. The alleged offense is (1) punishable by a minimum sentence of a commitment to prison under the Adult Sentencing Guidelines, and/or (2) a felony involving use of a firearm.

The burden of proof against EJJ designation status rests with the defense when a defendant is direct filed. Though fully three-quarters of disposed EJJ’s meet the presumptive certification criterion, motioning EJJ is more common because the motioning often results from plea negotiations when the defendant is seeking to avoid being adult certified.

¹⁷ Another alternative is also possible under Minnesota law. A county attorney may direct file in adult court a juvenile, age 16 or 17, charged with first-degree homicide. This occurs rarely and therefore was not examined.

¹⁸ Two criteria determine whether a juvenile case involving a juvenile aged 14 or older and charged with a felony offense can be disposed EJJ: (1) Whether the juvenile meets the criteria for presumptive certification to criminal court; or (2) whether “public safety” is served by having the juvenile sentenced as an EJJ.

entirely in the hands of the county attorney. Selection of the final dispositional alternative, however, is usually negotiated between the county attorney and defense lawyers, subject to the approval of the judge.

Offenders can also be designated EJJ through failed adult certification. When a certification hearing fails to affect a transfer to the criminal court, two outcomes are possible. First, if the offender was convicted of a presumptive offense, the court can automatically place the juvenile on EJJ status, denying the certification motion. Second, for both presumptive and non-presumptive offenders, the county attorney can “remove” the certification motion.¹⁹ If the certification motion is removed, EJJ status can still be conferred if the county attorney motions for an EJJ disposition.

Because motioning decisions and selections of dispositional alternatives are made at different stages of juvenile court processing by different sets of actors, we investigate each decision separately. We also recognize, however, that the two steps are not independent, because motioning is a necessary though not sufficient prerequisite for EJJ or adult certification.

Evaluation Design and Organization of the Report

The evaluation employs a combination of descriptive and analytic techniques to understand how blended sentencing works in Minnesota. To accomplish the three objectives of the research, the evaluation is divided into three distinct but interrelated parts.

Part I: Targeting of Dispositional Alternatives

Chapters 2 and 3 focus on an assessment of the extent to which the triad of dispositional alternatives are targeting their intended offender populations. Chapter 2 describes the first step in the process of selecting a dispositional alternative, *motioning*, while Chapter 3 describes the final selection of dispositional alternatives.

¹⁹ For example, certification motions may be removed on the basis of evidentiary deficiencies such as the loss of a witness or crucial evidence, or an inability to introduce evidence. More often than not, they are removed as part of a plea bargain.

Part II: Case Processing After Determination of the Dispositional Alternative

Chapter 4 presents *preliminary* data on a range of outcomes that occur after determination of the dispositional alternative, comparing specific dispositions or sentences as well as the recidivism of offenders that received different dispositional alternatives. The services that counties *proposed* to offer EJJ's during 1997 and 1998 are also briefly discussed.

Part III: Policy Implications

Chapter 5 presents the policy implications of the research described in Parts I and II along with suggestions for continued research on EJJ's.

By way of conclusion, each chapter ends with a summary of the principal issues examined. Relevant literature is reviewed and explanations of analytic techniques are provided where appropriate throughout the chapters.

Finally the executive summary provides a comprehensive overview of the complete report. This section summarizes the major issues raised in both parts and provides a complete list of policy implications and options.

Depending on the reader's preferences, this evaluation report can be read in several different ways. Readers interested in a "quick scan" can examine the principal results, issues, and policy options in the executive summary. Those seeking a comprehensive understanding of the decision-making processes that result in the selection of dispositional alternatives in Minnesota will want to read the study of the motioning decision (Chapter 2) and the analysis of the selection process of final dispositional alternatives (Chapter 3). Readers interested in case processing following selection of dispositional alternatives will want to examine the results describing specific juvenile dispositions and adult sentences as well as the preliminary data on recidivism (Chapter 4). It is recommended that all readers attend to the policy implications and the policy options that follow from this research (Chapter 5).

Benefits of the Evaluation

This evaluation is designed primarily to benefit Minnesota policymakers and practitioners interested in an objective analysis of EJJ. However, as more states incorporate blended sentencing into their juvenile sentencing structures, it is likely that there will be considerable national interest in Minnesota's experience. For example, other states that have already adopted blended sentencing may benefit from the example of our analytic approach to the study of dispositional alternatives and our efforts to explain and clarify the statistical results. In states contemplating adoption of blended sentencing, our results may help them to share Minnesota's successes and avoid its shortcomings.

NCSC/MSJ Evaluation Partnership

This evaluation is the product of a successful partnership between NCSC and MSJ. The research partnership included an advisory committee of legislators, juvenile court judges, county attorneys, public defenders, public interest groups, and researchers. The advisory committee reviewed the research design and the preliminary results of the data analysis.

The partners worked together to conceptualize the evaluation. Data collection was conducted by MSJ while data analysis was performed by NCSC. This report was jointly prepared by NCSC and MSJ.

Chapter 2: Motioning²⁰ – The County Attorney’s Decision

2.1. Introduction

The county attorney’s decision to motion is the necessary first step to receiving an EJJ disposition or being adult certified. The small fraction of juvenile offenders who are motioned form the pool from which EJJs and adult certifications will ultimately be selected. By default, the prosecutor also selects the conventional juveniles by choosing not to motion them.

In this chapter, the factors that influence the probability of motioning are analyzed using data from a randomly selected sample²¹ of cases disposed during 1997 and 1998. In the first section of the chapter, we discuss the factors, intended and otherwise, that we expect to influence the probability of motioning. Secondly, profiles of motioned and conventional juveniles are developed and compared. Third, results are reported from a multivariate regression analysis of sample data to determine which factors, in fact, influence the probability of motioning.²²

²⁰Includes filing a motion for EJJ or adult certification or “direct filing” for EJJ. For purposes of analysis, these three initial processing categories were collapsed into a single category, “motioning,” because we believe that offenders receiving these dispositional alternatives are all drawn from the same pool of serious juvenile offenders, much more distinct from offenders processed as conventional juveniles than among themselves. The specific type of motion selected (EJJ, direct file EJJ, or adult certification) will be just as likely to be based on local sentencing practices and the individual preferences of the local county attorney, in conjunction with the offender’s age, as on any other real differences between offenders.

These practices and preferences blur the distinction between the initial processing categories, rendering them moot and arguing for combining them into a single category. For example, some counties routinely motion all juveniles that meet the presumptive criteria for adult certification. Even though many of these cases are clearly not appropriate for certification, this strategy keeps the county attorney’s options open since conducting the proceedings as an adult certification doesn’t preclude an eventual EJJ or juvenile disposition. In addition, we found many cases where the juvenile met the presumptive criterion but the juvenile was motioned EJJ as the result of a plea negotiation. Although technically this leaves the burden of proof with the county attorney, in practice, the motion isn’t introduced in court until the plea agreement is reached.

²¹The sample used in the analysis consisted of 564 randomly selected cases of offenders (aged 14 or older and initially charged with felony offenses) that were disposed in 1997 or 1998. The sample was stratified to ensure representative numbers of offenders charged with presumptive offenses (based on the total number of disposed cases in 1997 and 1998).

²² We are using the regression analysis to test the “null hypothesis” that there are no differences between motioned and conventional juveniles according to the factors that we include in the regression analysis.

The details of the regression model's estimation and evaluation are found in Appendix B. Any reference to the significance of predictor variables draws on results summarized in Table B-1. References to the odds of motioning and the probability of motioning use data from Tables B-3 and B-4, respectively.

Finally, we conclude this chapter with a study of the probability that typical person and property offenders will be motioned. This exercise will enable us to examine how particular factors affect the probability of motioning for both types of offenders.

2.2. Analysis Variables and Data Sources

If the dispositional alternatives are being targeted as intended, motioned juveniles will differ from conventional juveniles according to age, the seriousness of the current offense, seriousness of their prior offense record, culpability, and amenability to juvenile programming. Consequently, variables related to these factors were included in the analysis along with other variables that previous research has found predictive of dispositions (additional sociodemographic characteristics of the offender and variables related to the way that the offender's case was processed). Based on these considerations, the variables shown in Table 2-1 were used in the analysis:

Table 2-1: Analysis Variables

<u>Variable Category</u>	<u>Variable Name</u>	<u>Variable Description</u>	<u>Source of Data</u> ²³
Sociodemographic	Age	Age at the time of the current offense	A
	Race	Offender's ethnic identity (White, African American, Native American, Hispanic, or Asian American)	A, M
	Gender	Offender's gender	A
	Live With Parents	Does the offender live with at least one parent?	M
Prior History	Prior Felony ²⁴	Does offender have at least one prior felony adjudication?	A
	Prior Placements	Does offender have at least one prior out-of-home placement?	A
Current Offense	Offense		A
	Seriousness Score	Offense seriousness score ²⁵	
	Type of Offense	Was the current offense a person, property, drug or "other" ²⁶ offense?	A
	Number of Charges	Was there initially more than one charge?	M
	Adult Codefendant	Was there an adult codefendant?	A
	Firearm	Was a firearm involved in the commission of the current offense?	A
	Weapon	Was a weapon other than a firearm involved in the commission of the current offense?	A

²³ "A" indicates that the source data for the variable was obtained from an automated source, while "M" indicates that the source data were manually collected

²⁴ As well as prior delinquent felonies, prior delinquent gross misdemeanors, misdemeanors, petty offenses, truancies, and status offenses were examined for possible inclusion in the regression but either data were too sparse for these variables or they failed to discriminate between the groups being compared. Consequently, they were dropped from further analysis.

²⁵ The Offense Severity Ranking Table is a tool developed by the Research and Evaluation Unit of the Minnesota State Court Administrator's Office to determine the most serious charge in a case and includes all felonies, gross misdemeanors, and misdemeanors in Minnesota. All felonies are ranked higher than gross misdemeanors and misdemeanors, and all gross misdemeanors are ranked higher than misdemeanors. These are all ranked above those crimes for which the level could not be determined. For felony crimes, the scale roughly incorporates the severity levels set by the Minnesota Sentencing Guidelines Commission. In setting severity rankings for individual crimes, the Commission takes into account many factors, including the level of harm and vulnerability of the victim, the culpability of the offender, and the statutory minimums and maximums. See Section V. Offense Severity Reference Table, Minnesota Sentencing Guidelines and Commentary, Revised August 1, 2001 for details of specific offense rankings. Within these severity levels, as well as within gross misdemeanors and misdemeanor levels, further ranking is achieved by using the more general seriousness scale of sex offenses followed by other person offenses, drug, property, and all others.

²⁶ The 41 "other" offenses in the unweighted sample included: (1) Crimes Against the Administration of Justice-Felony (7.3%), (2) Escape-Felony (4.9%), and (3) Weapons-Felony (87.8%).

Table 2-1: Analysis Variables

<u>Variable Category</u>	<u>Variable Name</u>	<u>Variable Description</u>	<u>Source of Data</u> ²³
	Victim Injury	Was a victim injured during the commission of the current offense?	A
Processing	District	The judicial district where the case was disposed ²⁷	A
	Detention	Was there at least one pre-dispositional out-of-home placement (between arrest and disposition for the current offense)?	A
	Supervised	Was the juvenile under some form of supervision by the juvenile justice system at the time of the current offense?	M

Among the sociodemographic variables, age, race, and gender are known to influence decisions about transfer to adult court (see, e.g., Bishop and Frazier, 2000). To capture the influence of race on the probability of motioning, individual variables for each category of the race variable were used: African American, Native American, Hispanic, or Asian American.²⁸ The evidence is mixed regarding whether living with a parent influences the type of disposition (see, e.g., Rankin, 1983) but there is enough evidence to warrant its inclusion in the analysis.

Among the processing variables, judicial district was included because the data collected by Torbet, Griffin, Hurst, and MacKenzie (2000) suggested differentials among the districts regarding their use of EJJ and adult certification. Pre-dispositional detention was included in the analysis because it has long been associated with more punitive dispositions (see e.g., McCarthy and Smith, 1986) and could thus influence the selection of dispositional alternatives. Whether the juvenile was under court-ordered supervision at the time of the current offense has also been

²⁷ Minnesota has ten judicial districts. Eight out of ten of those districts are comprised of multiple counties. Two judicial districts represent single counties: Ramsey (which includes the city of St. Paul, the state capitol) and Hennepin (which includes Minneapolis, the largest city in the state).

²⁸ There is no variable to identify white juveniles because they are used as the reference category against which other racial/ethnic groups will be compared.

shown to influence dispositional choices, especially transfer to adult criminal court (Barnes and Franz, 1989).

It was decided to jointly examine the effect of judicial district and type of current offense on the probability of motioning, rather than to examine their effects independently. These joint effects were included to test hypotheses about the policies that some districts were thought to employ when deciding when to motion or direct file certain types of offenders. Specifically, it was hypothesized that county attorneys in District Four (Hennepin County) were more likely to motion or direct file offenders who had committed “person” offenses than county attorneys from other districts.²⁹ It was also hypothesized that county attorneys in District Nine³⁰ were more likely to motion or direct file offenders who had committed “property” offenses than county attorneys from other districts. Both of these hypotheses were based on aggregate annual data collected on the youth designated EJJ in each district (Torbet, et al., 2000).

Note that several of the variables in Table 2-1 are reflective of the juvenile offender’s culpability and their response to previous juvenile programming, respectively. The variables reflecting culpability include the offender’s age, number of charges, and whether there was an adult codefendant. Number of out-of-home placements may reflect, in part, prior involvement in residential juvenile programming. We hypothesized that having a prior out-of-home placement would be indicative of a failure to respond to juvenile programming.

Data were obtained from both automated sources (the Total Court Information System (TCIS) and the State Justice Information System (SJIS) and by manual collection from juvenile court case files. Table 2-1 also identifies the source of data for the analysis variables.

²⁹ Ramsey County was also investigated for motioning differently than the other districts, but was found to be generally similar to most districts (excepting Districts Four and Nine).

³⁰ Aitkin, Beltrami, Cass, Clearwater, Crow Wing, Hubbard, Itasca, Kittson, Koochiching, Lake-Woods, Mahnomn, Marshall, Norman, Pennington, Polk, Red Lake, and Roseau Counties

2.3 Profiles of Motioned and Conventional Juveniles

Table 2-2 provides a comparison of motioned and conventional juveniles using data from the sample after case weights³¹ were applied. Differences between these two groups were tested for statistical significance. The *Maximum Likelihood Chi-square* was used with the categorical (binary) variables while a *t-test* was used for the two continuous variables (age and offense seriousness score). Using the data from this table, profiles of conventional and motioned juveniles are constructed.

Variable	Coding or Range	Type of Case				Significant Differences
		Motioned		Conventional Juvenile		
		N	% or Mean	N	% or Mean	
Sociodemographic						
Age	14.0 - 18.0	789	16.8	17,873	16.0	***
Race/Ethnicity						***
African American	1=African American	213	27.4%	3,233	18.1%	
Native American	1=Native American	57	7.3%	1,525	8.5%	
Hispanic	1=Hispanic	48	6.2%	1,037	5.8%	
Asian American	1=Asian American	57	7.3%	732	4.1%	
White	Reference Category	402	51.7%	11,346	63.5%	
Gender	1=Female	33	4.2%	1,769	9.9%	***
Lives With Parent(s)	1=Doesn't live with at least one parent	108	13.7%	2,196	12.3%	
Prior History						
Prior Felony	1=At least one prior delinquency felony	432	54.8%	7,381	41.3%	***
Prior Placement	1=At least one out-of-home placement prior to current offense	333	42.2%	4,209	23.5%	***
Current Offense						

³¹ Sample cases were weighted to ensure that the number of motioned and conventional cases in the sample roughly equaled the number of such cases among all cases disposed in 1997 and 1998. Without case weighting, we would be unable to generalize our results beyond our sample, when our clear intention is to generalize to all juveniles processed in juvenile courts in Minnesota. The derivation of case weights is explained in Appendix A.

Table 2-2: Comparison of Motioned and Conventional Juveniles

Variable	Coding or Range	Type of Case				Significant Differences
		Motioned		Conventional Juvenile		
		N	% or Mean	N	% or Mean	
Offense Seriousness Score ³²	101000 - 410000	789	136083.7	17,873	173788.4	***
Number of Charges	2=More than one charge	516	65.4%	9,272	51.9%	***
Adult Codefendant	1=Yes	120	15.2%	1,037	5.8%	***
Firearm	1=Firearm involved in current offense	171	21.7%	1,098	6.1%	***
Other Weapon	1=Weapon other than a firearm involved in current offense	222	28.1%	4,148	23.2%	**
Victim Injury	1=Yes	366	46.4%	3,965	22.2	***
District Four Drug Offense	1=Yes	45	5.7%	366	2.0%	***
District Four Other Offense	1=Yes	21	2.7%	427	2.4%	
District Four Person Offense	1=Yes	195	24.7%	915	5.1%	***
District Four Property Offense	1=Yes	27	3.4%	1,281	7.2%	***
District Nine Drug Offense	1=Yes	3	0.4%	183	1.0%	**
District Nine Other Offense	1=Yes	3	0.4%	244	1.4%	**
District Nine Person Offense	1=Yes	36	4.6%	366	2.0%	***
District Nine Property Offense	1=Yes	27	3.4%	793	4.4%	
All Other Districts Drug Offense	1=Yes	12	1.5%	549	3.1%	**
All Other Districts Other Offense	1=Yes	21	2.7%	915	5.1%	***
All Other Districts Person Offense	1=Yes	315	39.9%	5,246	29.4%	***
All Other Districts Property Offense	1=Yes	84	10.6%	6,588	36.9%	***
(Base Category)						
Processing						
Detention	1=At least one pre-dispositional out-of-home placement for current offense	387	49.0%	3,782	21.2%	***

³² The method of calculation for the Offense Seriousness Score results in an inverse relationship between scores on this scale and the seriousness of the offense so that higher offense seriousness scores are associated with less serious offenses while lower scores are associated with more serious offenses.

Table 2-2: Comparison of Motioned and Conventional Juveniles						
Variable	Coding or Range	Type of Case				Significant Differences
		Motioned		Conventional Juvenile		
		N	% or Mean	N	% or Mean	
Supervised	1=Offender under court-ordered supervision at time of the current offense	318	40.3%	4,819	27.0%	***
<u>Significant Differences</u> ^{33.}						
* <i>p</i> < .05	** <i>p</i> < .01	*** <i>p</i> < .001				

2.3.1. Conventional Juveniles: The typical conventional juvenile was a white male aged 16 years old at time of the offense who lived with at least one parent. Less than one-half of the conventional juveniles had any prior delinquency felony charges. Even fewer (less than one-fourth) had any out-of-home placements prior to the current offense.

The current offense severity (as determined by the offense seriousness score) was close to 175000 – comparable to that of “Arson 3” (the least serious arson charge) or a felony escape. Approximately half of all conventional juveniles had more than one charge. About 94 percent of them did NOT use a firearm or have an adult codefendant. Just under one-fourth of their current offenses did, however, involve use of a weapon other than a firearm. Slightly less than 25 percent of all conventional juveniles’ offenses resulted in a victim injury. Nearly one-third of their offenses were, in fact, person offenses that occurred in districts other than District 4 or District 9. About another third of the offenses were property offenses in other districts.

³³ *p* < .05 indicates that we are 95 percent confident that the difference could not have occurred by chance, *p* < .01 indicates 99 percent confidence, and *p* < .001 99.9 percent confidence.

Slightly less than one-quarter of the conventional juveniles had at least one pre-dispositional out-of-home placement related to that offense. Slightly more than 25 percent of them were under court supervision at the time of the offense.

2.3.2. Motioned Juveniles: Like the conventional juvenile, the motioned juvenile was a white male, aged 16.8 years old at time of the offense, and lived with at least one parent. However, the motioned juvenile was significantly different than the conventional juvenile in that he was more likely to be African American, male, and older – approximately 10 months older. Additionally, more than half had at least one prior delinquency felony, and more than 40 percent of them had an out-of-home placement prior to the current offense – significantly different than the conventional juvenile.

The motioned juvenile was also significantly different than the conventional juvenile with regards to the current offense. His offense was more serious, in the range of 136000 – comparable to that of criminal vehicular homicide or kidnapping (not great bodily harm, released in safe place). Nearly two-thirds of all motioned juveniles had more than one charge. They were also nearly three times as likely as the conventional juvenile to have had an adult codefendant and more than three times as likely to have used a firearm in the commission of the offense. If a firearm was not used in the current offense, they were still significantly more likely to have used another weapon. The current offense of a motioned juvenile was also twice as likely to have involved a victim injury (slightly under 50 percent) than the current offense of a typical conventional juvenile.

Motioned juveniles were also significantly different than conventional juveniles with regards to current offense/judicial district variables. One-fourth of the offenses committed were person offenses committed in District Four – nearly five times as many as conventional

juveniles. Another 40 percent of the offenses were person offenses committed in districts other than District Four and District Nine. They were significantly less likely, in general, to engage in property offenses across most districts and differed significantly from conventional juveniles in the frequency of all offenses.

Finally, nearly one-half of the motioned juveniles had at least one pre-dispositional out-of-home placement related to the current offense. Forty percent of them were under court supervision – making them significantly different from conventional juveniles in those regards also.

2.4. Factors Influencing the Probability of Motioning

We conducted a multivariate regression to identify the factors that influenced the probability of motioning. The tests of significance we conducted in the last section are useful for identifying factors that might influence the probability of motioning, but they were conducted independently of one another. Such “bivariate” tests of significance ignore the possibility that more than one independent variable at a time might be jointly influencing the probability of motioning. Multivariate regression allows for and, in fact, expects that independent variables will jointly influence the probability of motioning.

Table 2-3 summarizes some of the key results obtained from the *scobit*³⁴ regression analysis. This table lists the factors that were statistically significantly predictive of the probability of motioning, ranked in order of their capability to differentiate motioned from conventional juvenile cases.

Table 2-3: Factors Related to Motioning

<ul style="list-style-type: none"> ▲ Age* ▲ Detention ▲ Firearm* ▲ District 4 person offense ▲ District 9 person offense ▲ District 9 property offense ▲ District 4 drug offense ▲ Victim injury* ▼ African American ▲ More than one charge* ▲ Adult Co-defendant* ▲ District 4 property offense ▲ Prior out-of-home placements* ▲ Asian American ▲ Offense seriousness* ▲ Resides with at least one parent ▼ Native American ▲ Other districts person offense ▼ Used weapon other than gun ▲ Other districts drug offense 	<div style="border: 1px solid black; padding: 5px; width: fit-content; margin-bottom: 10px;"> <ul style="list-style-type: none"> ▲ Positive Relation ▼ Negative Relation </div> <p>Factors are listed in order of their importance. Only factors that were statistically significant are shown.</p> <p>*Intended Factors are indicated by an asterisk.</p>
--	---

³⁴ Scobit (or skewed logit) is the appropriate regression technique when a dichotomous dependent variable is skewed (Nagler, 1994). Both of the most commonly used techniques for the estimation of models with dichotomous dependent variables (logit and probit) impose the assumption that individuals with a probability of .5 of choosing either of the two alternatives are most sensitive to changes in the independent variables. This assumption is imposed by the estimation technique because both the logistic and normal density functions are symmetric about zero. Rather than let methodology impose substantive assumptions, it is possible to select a set of distributions for the disturbances to the normal or logistic distributions, dependent upon a parameter that is estimated rather than assuming a specific distribution. This approach makes it possible to estimate the correct specification and hence correctly estimate marginal and interactive effects. The resulting scobit estimator is appropriate where individuals with *any* initial probability of choosing either of two alternatives are most sensitive to changes in independent variables.

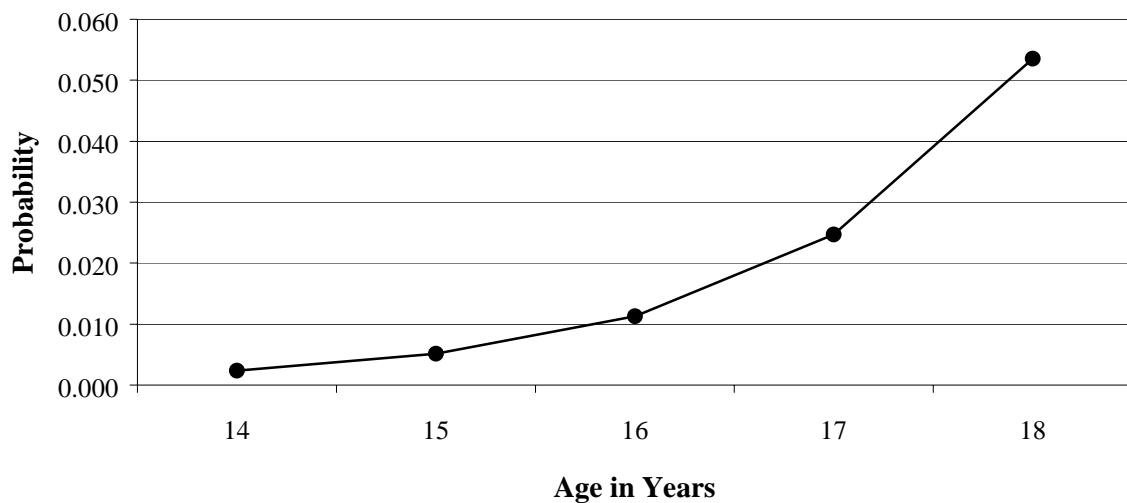
Once the observations in our sample were weighted, it was clear that the distribution of values for the dependent variable (the probability of being motioned or direct filed) was severely skewed. Of the 18,662 cases in our weighted sample, only 820 were motioned or direct filed. Hence, scobit rather than logit or probit was used to perform the regression.

The effect of *Age* was much larger than that of any of the other factors. *Detention* (pre-dispositional, out-of-home placement) was the next most influential factor, followed closely by whether the current offense involved a firearm. Next most influential were several of the factors reflecting the joint effect of offense and judicial district. Victim injury, adult codefendant, and whether the juvenile was an African American were also relatively influential.

2.4.1. Intended Differences

Age. Table 2-3 shows that *Age* (at the time of the offense) was the single most influential variable predicting the probability of motioning. Every increase in age by one year slightly more than doubled the odds that the juvenile offender would be motioned or direct filed. Figure 2-1 (drawing on data from Table B-5) shows that the probability of being motioned or direct filed increased monotonically with age.

Figure 2-1: Probability of Being Motioned or Direct Filed by Age



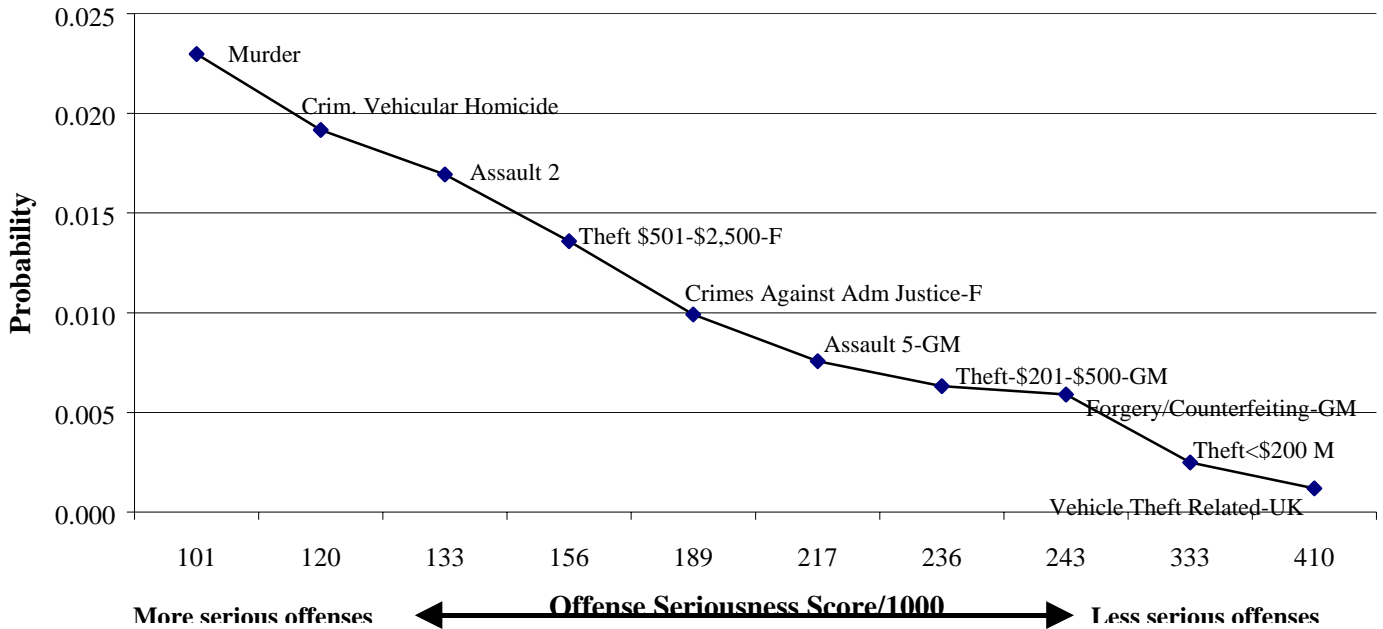
Current Offense. As expected, all the current offense variables (*Offense Seriousness Score*, *Number of Charges*, *Adult Codefendant*, *Firearm*, *Other Weapon*, and *Victim Injury*) were significantly related to the probability of motioning and all save one (*Other Weapon*), in the direction we expected. Whether the current offense involved a firearm was the third most influential variable predicting the probability of motioning. If the current offense involved a firearm, the odds of being motioned or direct filed almost quadrupled, compared to an offender who used no weapon at all.

Somewhat less influential were *Victim Injury*, *Number of Charges*, and *Adult Codefendant*, respectively. A victim injury almost tripled the odds of being motioned or direct filed. Having more than one charge almost doubled the odds of being motioned or direct filed. Similarly, having an adult codefendant more than doubled the odds of being motioned or direct filed. Recall that the latter two variables are related to offender culpability, suggesting that, as intended, offender culpability is influencing the decision to motion offenders.

Other current offense variables, though significant, were much less influential. The probability of being motioned or direct filed was found to increase as the severity of the offense increased (even after type of offense — person, property, drug, or other — was controlled). Figure 2-2³⁵ (using data from Table A-5) shows that the probability of being motioned or direct filed increased monotonically as the offense seriousness increased, holding other variables at their mean. Oddly and unexpectedly, if the current offense involved a weapon other than a firearm, the odds of conventional juvenile processing (slightly) increased by 1.4 times compared to a similar juvenile who didn't use a weapon.

³⁵ Offense seriousness scores were divided by 1000 in Figure 2-2 for scaling purposes.

Figure 2-2: Probability of Being Motioned or Direct Filed by Offense Seriousness Score



Prior Offenses. Whether the offender had been previously adjudicated for a felony offense as a juvenile was not significantly related to the probability of motioning.

Prior Out-of-Home Placements. Table 2-2 shows that whether the offender had ever experienced out-of-home placements was significant. Having at least one prior out-of-home placement slightly increased the odds of being motioned or direct filed by about 1.6 times, compared to a similar juvenile offender with none. Since we hypothesized that a prior out-of-home placement would be indicative of a failure to respond to juvenile programming, this result was expected.

2.4.2. Other Differences

Sociodemographic. Besides Age, two other sociodemographic variables, *Race* and *Live With Parents* were significant. *Gender* was not significant. Table 2-2 shows that three of the four

variables used to detect the influence of race on the probability of being motioned or direct filed were significant (*African American, Native American, and Asian American*). Only the variable used to identify Hispanics was not significant, indicating that the probability of motioning or being a direct file for Hispanics was only marginally different than that for Whites. The odds of White juveniles being motioned were nearly triple those of African Americans and a little more than one and a half times the odds for Native Americans. On the other hand, Asian-American juveniles were nearly twice as likely as Whites to be motioned or direct filed. It is hypothesized that the latter finding is largely the result of gang involvement among Asian American juveniles. Thus, Asian American juveniles had the greatest probability of being motioned or direct filed, followed by Whites and Hispanics, then Native Americans, and finally, African Americans. The most influential of the race variables, *African American*, was only about as important as *Victim Injury*.

Oddly enough, results indicate that juveniles who lived with at least one parent were more than one and one-half times more likely to be motioned than juveniles who did not live with either parent. While this was not a strong effect, it was not in the direction we expected.

Type of Offense and Judicial District. Factors reflecting the joint influence of the type of offense and judicial district on the probability of motioning were included in the analysis to test hypotheses about the motioning policies observed in some districts. Specifically, it was hypothesized that county attorneys in District Four (Hennepin County) were more likely to motion or direct file offenders who had committed “person” offenses than county attorneys from other districts. It was also hypothesized that county attorneys in District Nine were more likely to motion or direct file offenders who had committed “property” offenses than county attorneys from other districts. Both hypotheses were confirmed by our results.

Geography (i.e., the judicial district where the case was disposed) was found to affect the probability of motioning for each offense type. The odds of motioning for different types of offenders in different districts relative to the odds for a property offender from “out-state”³⁶ (the “relative odds”) varied considerably. In line with our expectations, the relative odds of motioning for juvenile person offenders from Hennepin were much higher than those for person offenders from any other district (except the Ninth). Specifically, the relative odds for person offenders from Hennepin, the Ninth District, and the out-state districts were 7.1, 8.5, and 1.6, respectively. Also as expected, the relative odds of motioning for juvenile property offenders from the Ninth District were much higher than those for property offenders from any other district. Specifically, the relative odds for property offenders from the Ninth District and Hennepin were 8.8 and 3.8, respectively (remember, out-state property offenders were the group against which all comparisons were made). Additionally, we discovered that the relative odds of motioning for juvenile drug offenders from District Four were much higher than those for drug offenders from any other district. Specifically, the relative odds for drug offenders from Hennepin, the out-state districts, and the Ninth District were 6.7, 2.0, and 1.1, respectively.

Among the joint judicial district/offense type factors, the joint effect of District Four person offenses made the largest contribution to the estimate of the probability of being motioned or direct filed, the fourth largest contribution overall. The other significant interactions contributed at slightly lower but approximately equal levels, except the interactions involving out-state juveniles, which were much less influential. Consequently, we conclude that the joint effects of offense type and judicial district were one of the most influential sets of factors explaining the probability of motioning.

³⁶ Judicial districts other than Four and Nine.

Processing. Among the other (outside of judicial district) processing variables, *Detention* was significant while *Supervised* was not. *Detention* indicates whether the offender had been placed out-of-home after the offense but prior to disposition. Such placements would principally include secure detention but could also include other types of out-of-home placements (e.g., emergency placement with a social welfare agency). A pre-dispositional out-of-home placement was the second most important factor for determining the probability that a juvenile offender would be motioned or direct filed. Having a pre-dispositional out-of-home placement almost quadrupled the odds that the juvenile offender would be motioned or direct filed.³⁷ These results are consistent with a long line of research that shows pre-dispositional detention is associated with more punitive dispositions (see e.g., McCarthy and Smith, 1986).

2.5. Offender Scenarios

We next construct two scenarios, one for a serious person offender and the other for a property offender, to study the probability of motioning for these types of offenders. This exercise will enable us to examine how particular factors affect the probability of motioning for both types of offenders.

The first scenario (Scenario One) describes a hypothetical (but typical) serious person offender, wherein the offender's age and the Judicial District are varied. Other factors were fixed as follows:

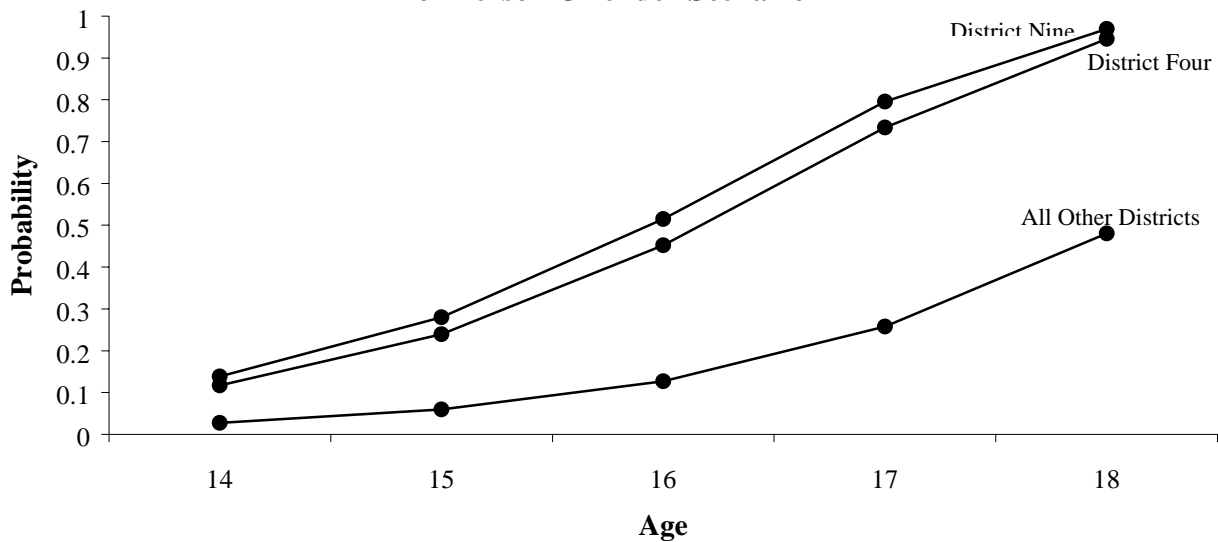
- The juvenile is a white male who lives with at least one parent.

³⁷ Minority juveniles are much more likely to be detained than White juveniles (Snyder and Sickmund, 1999). Detention is also related to offense seriousness. Consequently, we speculated that inclusion of this variable in the scobit regression might have masked stronger ethnicity and offense seriousness effects than we detected. To examine these possibilities, we re-ran the regression omitting *Detention* as a predictor. There was very little difference between the two sets of coefficients. Three variables that were marginally significant in the regression that included *Detention* became non-significant in the regression without *Detention*, including *Native American*, *Weapon*, and *Other District Drug Offense*. *Other District Other Offense* was not significant when *Detention* was included but became marginally significant when it was omitted from the regression. This suggests that the effect of *Detention* on the probability of motioning is independent of race and offense seriousness, in line with the results of other studies (see Feld, 1995b).

- He has at least one prior delinquent felony and no out-of-home placements prior to the current offense.
- His principal current offense is Assault 2 (making him a “person” offender) and he has more than one charge. The current offense did not involve an adult codefendant, but a firearm was involved and there was injury to the victim.
- The juvenile was not detained (nor did he receive any other type of pre-dispositional out-of-home placement) and was not under court-ordered supervision at the time of the current offense.

Figure 2-3 shows how the probability of being motioned for a Scenario One offender varies by age and district. The probability of being motioned or direct filed increases with every year of age in each configuration of districts, as expected. At age 14, the probability of a Scenario One offender being motioned or direct filed is very low in the out-state districts but about one chance in ten in the Fourth and Ninth Districts. In the out-state districts, the probability never exceeds .48 for any age, indicating that person offenders fitting this scenario are more likely not to be motioned than motioned at any age. From age 16 forward, the probability of motioning exceeds .5 for a Scenario One offender in District Nine, indicating that they are likely to be motioned from that age onwards. At age 17, the probability of motioning is about three chances out of four in District Four and eight out of ten in District Nine. By the time the offender reaches age 18, the probability of motioning in Districts Four and Nine are virtually indistinguishable and very high, around .95.

Figure 2-3: Probability of Motioning or Direct File by District and Age for Person Offender Scenario



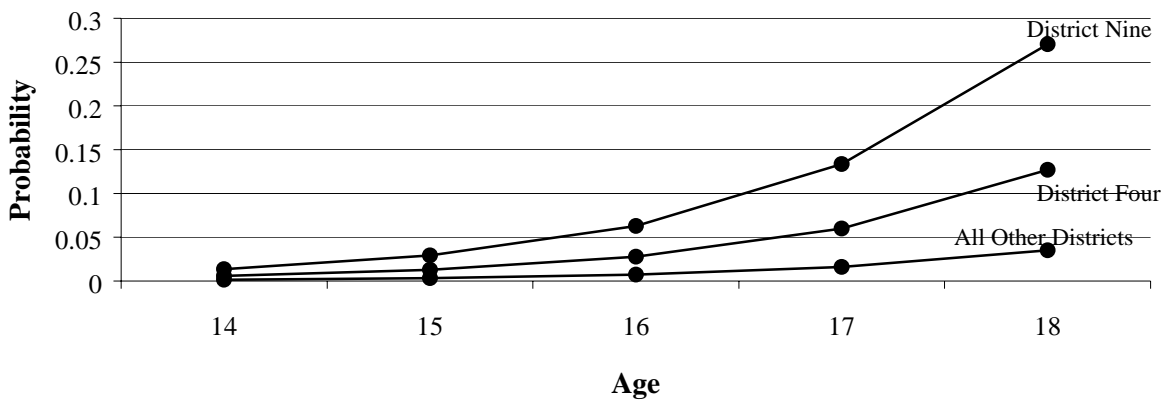
Next, in Scenario Two, we examine the probability of motioning for a low-level property offender (charged with Burglary 3). The Scenario Two offender is identical to Scenario One offender except as follows:

- Current offense is changed to Burglary 3 (making him a “property” offender).
- Current offense did not involve use of a firearm and there was no victim injury.

Figure 2-4 shows how the probability of being motioned for a Scenario Two offender varied by age and district. The probability of being motioned or direct filed increases with every year of age in each configuration of districts, as expected. At age 14, the probability of a Scenario Two offender being motioned or direct filed is very low in every district but even at this age, considerably higher in the Ninth District. In the out-state districts, the probability never exceeds .03 at any age, indicating that property offenders fitting this scenario will almost certainly not be motioned. With every year of age after 14, the probability of motioning more than doubles from the previous age in every district, but even with this, still remains low. By the

time the offender reaches age 18 (when the probability reaches its maximum in every district), the probability of motioning in Districts Four and Nine are only about .13 and .27, respectively. Comparing Figures 2-3 and 2-4, it is evident that the probability of motioning is much higher for a Scenario One (person) offender than for a Scenario Two (property) offender in Districts Four and Nine at every age.

Figure 2-4: Probability of Motioning or Direct File By District and Age for Property Offender Scenario



2.6. Conclusions

Motioned and conventional juveniles were found to differ from one another in both intended and other ways. As intended, age was the single most influential variable predicting the probability of motioning (the older the juvenile, the greater the odds that they would be motioned). Also in line with our expectations, all of the current offense variables (*Offense Seriousness Score, Number of Charges, Adult Codefendant, Firearm, Other Weapon, and Victim Injury*) were predictive of the probability of motioning and all save one (*Other Weapon*) in the direction we expected. Whether the current offense involved a firearm was the third most influential variable predicting the probability of motioning. The other current offense factors were not as influential as *Firearm* but were still some of the best predictors.

Contrary to intentions, we found no evidence that the offender's prior offense history affected the probability of motioning. However, all of the variables that reflect offender culpability (the offender's age, whether there was an adult codefendant, and the number of charges) were significant and in the direction we expected. Apparently, offender culpability is an important consideration of the prosecutor when deciding whether to motion. Also, the variable that we hypothesized might reflect responsiveness to juvenile programming, *Prior Placements*, was significant. Having at least one prior out-of-home placement greatly increased the odds of motioning. When an offender returns to court after having experienced an out-of-home placement (many of these placements are made for juvenile programming reasons), the court may conclude that the offender is not responding well to juvenile programming.

Other factors, besides those intended, also influenced the probability of motioning. Geography (i.e., the judicial district where the case was disposed) was found to affect the probability of motioning for each offense type. As expected, person offenders from Districts Four (Hennepin County) and Nine were much more likely to be motioned than person offenders from any other district. Also as expected, property offenders from District Nine were much more likely to be motioned than property offenders from any other district. Additionally, we discovered that drug offenders from Hennepin were much more likely to be motioned than drug offenders from any other district.

Race was also found to influence the probability of motioning — Asian American juveniles had the greatest probability of being motioned or direct filed, followed by Whites and Hispanics, then Native Americans, and finally, African Americans. By way of perspective, however, the most influential of the race variables, *African American*, ranked ninth overall in its ability to differentiate motioned from conventional juveniles.

Unexpectedly, our results indicated that juveniles who lived with at least one parent were one and one half times more likely to be motioned than juveniles who did not live with either parent. Though not a strong effect, it was not in the direction that we anticipated.

Our analysis also indicated that one of the processing variables, *Detention*, was significant, in line with other dispositional research but probably not what the crafters of the 1994 legislation intended. A pre-dispositional out-of-home placement was the second most important factor for determining the probability that a juvenile offender would be motioned or direct filed, greatly increasing the odds that the juvenile offender would be motioned or direct filed. These results are consistent with a long line of research that shows pre-dispositional detention is associated with more punitive dispositions.

At this preliminary point of processing, what conclusions can we draw about whether prosecutors are targeting the type of offender for motioning that the authors of the 1994 reforms intended? The answer to this question would seem to be that prosecutors are motioning primarily on the basis of intended factors — factors related to the current offense, offender culpability, and the offender's responsiveness to juvenile programming. Surprisingly, the offender's offense history does not influence the probability of motioning, perhaps because the county attorney does not have complete information about prior offenses at this early stage of processing.

Thus, the conventional juvenile disposition seems to be targeting its intended offender population. Conventional juveniles were the youngest, had the least serious current offense-related factors, showed the least culpability, and had the least extensive programming histories among the dispositional alternatives.

However, because we found that other factors, probably not intended by the authors of the 1994 reforms, also influenced the probability of motioning, we must qualify our earlier conclusions. It is unlikely that the reformers intended that Whites, Hispanics and especially Asian American juveniles would be more subject to motioning than other racial/ethnic groups. It is also unlikely that they intended that juveniles receiving pre-dispositional out-of-home placements would be more subject to motioning than juveniles without such placements. Consequently, our assessment of whether prosecutors are targeting the type of offender for motioning that the authors of the 1994 reforms intended is mixed . . . both intended and unintended factors influence the decision to motion.

It is at this point in the analysis that we look for evidence of unintended widening-of-the-net. Recall from Chapter One that failure to find significant differences between the conventional juveniles and the motioned juveniles in our sample would be indicative of widening-of-the-net. However, as we have just summarized, these two groups were distinct according to the criteria that the drafters of the 1994 reforms intended, with the exception that there were no differences by prior offense history. Consequently, we find little evidence that unintended widening-of-the-net has occurred at the motioning stage.

All things considered, our results are consistent with what is known about motioning in general (see, e.g., Gottfredson and Gottfredson, 1988). Specifically, current offense factors and offender culpability are the primary influences on county attorneys' decisions at this early stage of processing, while factors related to prior offense history are, at best, secondary.

Chapter 3: Dispositional Alternatives – The Negotiated Decision

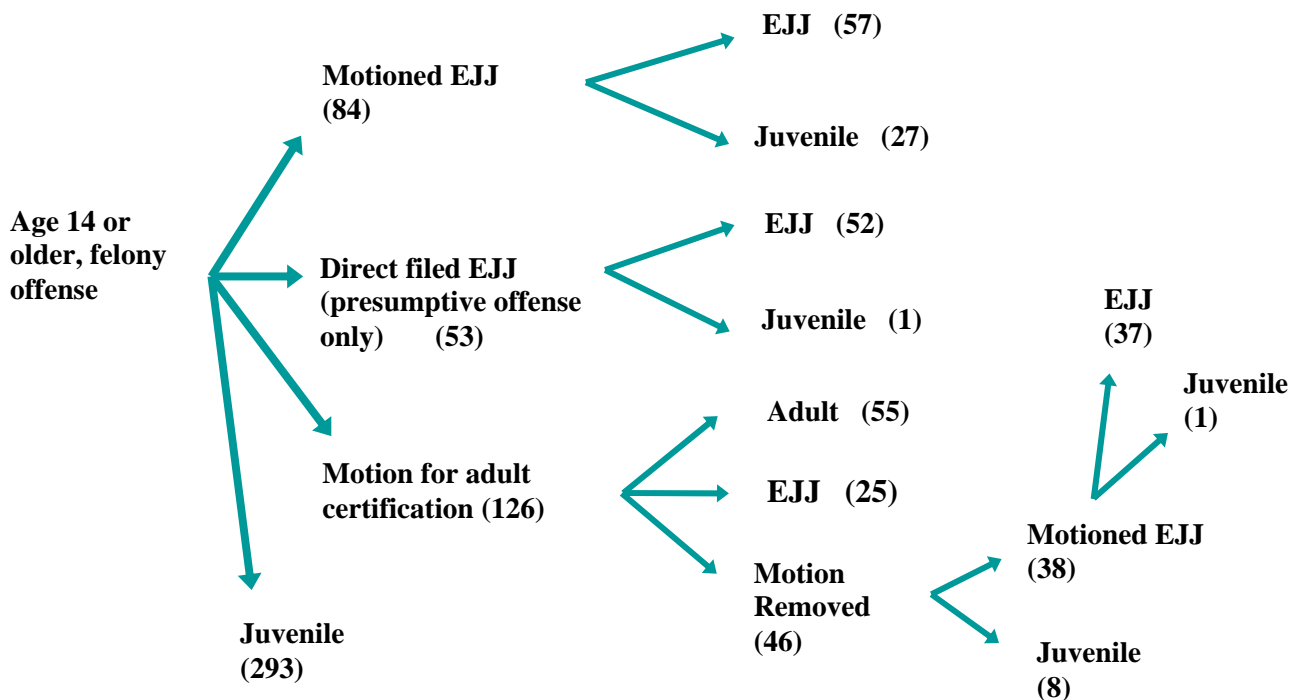
3.1. Introduction

Unlike the decision to motion (or direct file), made primarily by the county attorney, the type of disposition is usually negotiated by the county attorney and defense lawyers, subject to the approval of the judge. The juvenile court judge almost always approves the negotiated recommendation made by the county attorney and the defense lawyers (Cox and Conrad, 1996).

After a juvenile has been motioned, there are three possible outcomes (assuming the case is not dismissed and that the juvenile is not cleared of the charges): (1) EJJ disposition, (2) adult certification, or (3) juvenile disposition, when motioning fails. Figure 3-1 shows the variety of possible processing routes that lead to one of these dispositional alternatives and the distribution of our unweighted sample by these routes (sample numbers are shown in parentheses). While the figure gives the impression that these possible routes are distinct, plea bargaining, local sentencing practices, and the preferences of local county attorneys tend to blur the distinctions in practice.

In this chapter, the factors that influence the probability that motioned offenders will receive these dispositional alternatives are examined. In the first section of the chapter, the factors, intended and otherwise, that we expect to influence the probability of receiving the dispositional alternatives are discussed. Secondly, profiles of juveniles — based on which dispositional alternative they received — are constructed and tests are conducted for significant (bivariate) differences among the dispositional alternatives.

Figure 3-1: Distribution of Sample by Processing Pathways to Dispositional Alternatives



Third, the results of a multinomial logistic regression (MNL³⁸) are used to examine the factors that influence the probability of motioned offenders receiving the dispositional alternatives. As in Chapter Two, an effort will be made to ascertain whether juveniles receiving these dispositional alternatives differed in ways intended by the legislation and otherwise. Recall that we previously hypothesized that, if the three dispositional alternatives are being effectively targeted as intended, offenders receiving each type of dispositional alternative will differ according to age, seriousness of the current offense, seriousness of prior offenses, culpability, and amenability to juvenile programming. Our investigation will also consider whether other

³⁸ The multinomial logistic regression model is appropriate for problems involving more than two possible outcomes. It is identical to estimating simultaneously binary logits for all possible comparisons among the dispositional alternatives. The probability is a non-linear function of the independent variables used in the regression.

sociodemographic and processing variables influence the probability of receiving the dispositional alternatives in ways that were not necessarily intended.

The details of the regression model's estimation and evaluation are found in Appendix C. Any reference to the significance of predictor variables draws on results summarized in Table C-1. References to the odds of motioning and the probability of motioning use data from Tables C-3 and C-4, respectively.

Finally, we conclude this chapter with a study of the probability that typical person and property offenders will receive the various dispositional alternatives. This exercise will enable us to examine how particular factors affect the probability of receiving the dispositional alternatives for both types of offenders.

3.2. Analysis Variables

With two exceptions, the analysis variables used in this chapter to investigate the influences on the selection of dispositional alternatives are the same as those used in Chapter Two to investigate influences on motioning. One difference is that the effects of judicial district and offense type were investigated independently rather than jointly because (unlike the analysis of the influences on the probability of motioning) we did not have *apriori* hypotheses about the joint effect of these factors in the context of predicting dispositional alternatives, and further, the data were just too sparse to support the use of such joint factors. Consequently, separate sets of variables were added to investigate the independent influence of type of offense and that of judicial district, respectively, on the selection of dispositional alternatives among motioned offenders.

To measure the influence of the type of offense relative to the reference category of property offenses, we added variables to indicate whether the current offense was a person, drug,

or “other” offense. To measure the influence of judicial district on the selection of dispositional alternatives among motioned offenders, a variable was added to indicate whether the case was disposed in District Five or elsewhere. Our data showed that the EJJ option was used much less frequently and the adult certification much more frequently in the Fifth District³⁹ than in the other districts. The other districts appeared rather homogenous in their pattern of usage of the three dispositional alternatives. Consequently, a variable was created to compare selection of dispositional alternatives in the Fifth District with the selections made in the other districts.

The other difference was that a variable that reflected the probability of motioning (*Lambda*) was included in the analysis of dispositional alternatives because, as we have noted, any model of the selection of the final dispositional alternative will need to reflect the influence of the motioning decision. Inclusion of this variable signifies recognition that the two processing steps are not independent because motioning is a necessary though not sufficient prerequisite for an EJJ disposition, adult certification, or a motioned-juvenile disposition. This variable compensates for the “selection bias” that would have occurred had the analysis focused on the selection of dispositional alternatives in isolation from the county attorney’s motioning decision (see, e.g., Podkopaz and Feld, 1996). As we discussed in the last chapter, the county attorneys’ motioning decision defines the pool from which EJJs, adult certifications, and motioned-disposed juveniles will ultimately be selected. The regression model used in this chapter to investigate the factors influencing the probability of receiving the dispositional alternatives can be described as a “selection model” by right of its inclusion of *Lambda*. Selection models have been investigated extensively in the econometrics literature (see, e.g., Lee, 1983). The details of the derivation of *Lambda* are found in Appendix C.

³⁹ Blue Earth Brown, Cottonwood, Faribault, Jackson, Lincoln, Lyon, Martin, Murray, Nicollet, Nobles, Pipestone, Redwood, Rock, and Watonwan Counties

3.3. Profiles of Dispositional Alternatives

Table 3-1 provides a comparison of motioned juveniles according to the dispositional alternative that they received for the weighted⁴⁰ sample. Differences between these three groups were tested for statistical significance. The *Maximum Likelihood Chi-square* was used if the variable was categorical and an Analysis of Variance (ANOVA) was used if the variable was continuous (age and offense seriousness score). Using the data from this table, profiles of EJJ, adult certifications, and motioned-disposed juveniles were constructed.

Table 3-1: Comparison of Dispositional Alternatives								
Variable	Coding (B) or Range(C)	Dispositional Alternative						Significant Differences
		EJJ		Adult Certification		Motioned-Disposed Juvenile		
		N	% or Mean	N	% or Mean	N	% or Mean	
Sociodemographic								
Age	14.0 - 18.0	513	16.8	220	17.2	111	16.3	***
Race/Ethnicity								**
African American	1=African American	114	22.8%	72	32.7%	45	40.5%	
Native American	1=Native American	39	7.8%	16	7.3%	6	5.4%	
Hispanic	1=Hispanic	36	7.2%	12	5.5%	3	2.7%	
Asian American	1=Asian American	36	7.2%	16	7.3%	9	8.1%	
White	Reference Category	276	55.1%	104	47.3%	48	43.2%	
Gender	1=Female	15	2.9%	8	3.6%	12	10.8%	*
Lives with Parent(s)	1=Doesn't live with at least one parent	72	14.0%	20	9.1%	21	18.9%	*
Prior History								
Prior Felony	1=At least one prior delinquency felony	255	49.7%	156	70.9%	60	54.1%	***
Prior Placement	1=At least one out-of-home placement prior to current offense	216	42.1%	64	29.1%	69	62.2%	***
Current Offense								

⁴⁰ A different set of weights was used in this analysis than those used in Chapter Two. In the present case, we had to develop weights so that the pattern of dispositional alternatives observed in our sample reflected the distribution observed in the cases disposed during 1997 and 1998. The derivation of these weights is explained in Appendix A.

Table 3-1: Comparison of Dispositional Alternatives

Table 3-1: Comparison of Dispositional Alternatives								
Variable	Coding (B) or Range(C)	Dispositional Alternative						Significant Differences
		EJJ		Adult Certification		Motioned-Disposed Juvenile		
		N	% or Mean	N	% or Mean	N	% or Mean	
Sociodemographic								
Offense Seriousness Score	101000 - 410000	513	131777.8	220	146381.8	111	140675.7	***
Drug Offense	1=Yes	33	6.4%	12	5.5%	18	16.2%	**
Other Offense	1=Yes	24	4.7%	8	3.6%	15	13.5%	**
Person Offense	1=Yes	372	72.5%	144	65.5%	66	59.5%	*
Property Offense	1=Yes	84	16.4%	56	25.5%	12	10.8%	**
Number of charges	2=More than one charge	330	64.3%	148	67.3%	75	67.6%	
Adult Codefendant	1=Yes	69	13.5%	48	21.8%	15	13.5%	*
Firearm	1=Firearm involved in current offense	114	22.2%	56	25.5%	15	13.5%	*
Other Weapon	1=Weapon other than a firearm involved in current offense	144	28.1%	40	18.2%	48	43.2%	***
Victim Injury	1=Yes	243	47.4%	100	45.5%	48	43.2%	
Processing								
District Five	1=Yes	12	2.3%	40	18.2%	6	5.4%	***
Detention	1=At least one pre-dispositional out-of-home placement for current offense	261	50.9%	92	41.8%	57	51.4%	
Supervised	1=Offender under court-ordered supervision at time of current offense	225	43.9%	68	30.9%	42	37.8%	**
Significant Differences:								
	* $p < .05$							
	** $p < .01$							
	*** $p < .001$							

3.3.1. EJJ Disposition. The typical EJJ at final disposition was a White male, aged 16.8 years old at the time of the offense, and living with at least one parent. Half of those disposed EJJ had at least one prior delinquency felony charge. Slightly more than 40 percent had an out-of-home placement prior to the current offense.

The current offense severity (as determined by the offense seriousness score) was in the range of 131000 – comparable to that of Criminal Sexual Conduct 4 (no weapon used) or Burglary 1. Nearly two-thirds of EJJs had more than one charge. Almost three-fourths of their current offenses were person offenses while another 16 percent were property offenses. The majority of cases did *not* involve an adult codefendant. Slightly less than one-fourth of the cases involved the use of a firearm, while another fourth used a weapon *other than* a firearm in the commission of the offense. Nearly half of all offenses did, however, result in a victim injury.

Slightly more than half of those disposed of as EJJ also had at least one pre-disposition out-of-home placement for the current offense. More than 40 percent were under court supervision at the time of the offense.

3.3.2. Adult Certifications. Like EJJs, those certified as adults were typically White males who lived with at least one parent. However, adult certifications were significantly different than EJJs in a number of ways. They were more likely than EJJs to be African American (nearly 10 percent more likely), to be living with at least one parent, and to be older – almost five months older (17.2 years old vs. 16.8 years old) — and to have had at least one prior felony (over 70 percent). They were also slightly more likely to be female and significantly less likely (about 30 percent vs. 40+ percent for EJJs) to have had an out-of-home placement prior to the current offense.

In regard to current offenses, two-thirds of the adult certifications had more than one charge – similar to EJJs. Victim injuries occurred at roughly the same rate as EJJs. Adult certifications, however, differed significantly on other aspects related to the current offense. Their offenses were less serious, falling in the classification range of 146000 – comparable to that of “Terroristic Threats” or Assault 4 (felony). They were also more likely to have had an adult codefendant (nearly a third more likely), as well as to have used a firearm in the current offense. Those certified as adults, however, were nearly 10 percent less likely than EJJs to have used a weapon other than a firearm during the offense.

Those certified as adults also differed significantly from EJJs regarding the type of current offense. Person offenses accounted for a smaller proportion of adult certification offenses than for EJJs (two-thirds of all offenses for adult certifications vs. nearly three-quarters for EJJs). Property offenses, in contrast, accounted for a larger proportion of adult certification offenses (about 26 percent) than for EJJs (16 percent).

Juveniles who were adult certified also differed significantly from EJJs according to several processing variables. Juveniles whose cases were disposed in District Five were nine

times more likely to receive an adult certification disposition than an EJJ disposition. While at least one pre-dispositional out-of-home placement occurred in *more than half* of all EJJs, they occurred in just over 40 percent of the adult certifications. Additionally, about one-third of those disposed as adult certifications were under court supervision at the time of offense (compared to over 40 percent for EJJs).

3.3.3. Motioned Juveniles Disposed as Juveniles. Like both EJJ and adult certification dispositions, motioned-disposed juveniles were likely to be male, white and live with at least one parent. Beyond these initial similarities, however, motioned-disposed juveniles were significantly different than EJJs and adult certifications as follows:

- They were the *most likely* of the three dispositional alternatives to be African American. In fact, they were *nearly as likely* to be African American as White (40 percent vs. 43 percent).
- They were also *more likely* to be female than juveniles from the other dispositional alternatives – approximately one-tenth of the motioned-disposed juveniles were female.
- Motioned juveniles were also the *youngest* in age – 16.3 years old – of the three groups.
- More of them – nearly one-fifth — did *NOT* live with a parent.

In regards to their prior history, motioned-disposed juveniles were again significantly different. More than half of this group had at least one prior delinquency felony – a higher proportion than EJJs but considerably smaller than the proportion for adult certifications. Of the three groups, they were also the *most likely* to have had an out-of-home placement prior to their current offense (nearly two-thirds of the motioned-disposed juveniles had such a placement).

Similar to EJJs and adult certifications, approximately two-thirds of motioned-disposed juveniles had more than one charge. Victim injuries from the offense occurred at roughly the

same rate across all three dispositions. Motioned-disposed juveniles differed significantly, however, from the other two dispositional groups regarding current offense severity. Their mean offense score was in the range of 140000 – comparable to that of Burglary II or Robbery (Type Unknown). Along the continuum of offense seriousness, this locates their current offense as *less serious* than EJJ's and *more serious* than adult certifications. The majority of their offenses did NOT involve an adult codefendant — a rate similar to EJJ's, but nearly a third less than the rate for adult certifications. Motioned-disposed juveniles were the *least likely* (only 13.5 percent) of the three groups to have used a firearm in the commission of their offense, but conversely the *most likely* – over 40 percent — to have used a weapon other than a firearm during the offense.

Motioned-disposed juveniles also differed significantly from juveniles from the other two dispositional alternatives by current offense type. Like EJJ's and adult certifications, the majority of their offenses were person offenses; however, across groups, they were the *least likely* to commit person offenses (more than 10 percent less often than EJJ's and slightly less often than adult certifications). They were, however, *more likely* to be involved in both drug and “other” offenses (primarily weapons offenses) — nearly three times more frequently than both EJJ's and adult certifications. Property offenses accounted for a smaller proportion of their current offenses than for either of the other two groups.

Finally, motioned-disposed juveniles did not differ significantly from EJJ's and adult certifications regarding whether there was pre-dispositional out-of-home placement – occurring in more than 40 percent of the cases across the board. More than one-third of motioned-disposed juveniles were under court supervision at the time of offense – more frequently than adult certifications and less frequently than EJJ's.

3.4. Factors Influencing the Probability of Dispositional Alternatives

As noted in Chapter 2, bivariate tests of significance such as those conducted in the last section are useful for identifying factors that might influence the selection of dispositional alternatives but ignore the possibility that more than one factor at a time might be jointly influencing the selection of dispositional alternatives. Multivariate regression allows for and, in fact, anticipates that independent variables will jointly influence the probability of motioning.

Table 3-2 summarizes some of the key results obtained from the MNLM regression analysis.⁴¹ This table lists the factors that are statistically significantly predictive of the type of dispositional alternative, ranked in descending order of their capability to predict the alternatives.

As can be seen, number of prior out-of-home placements contributed the most to explaining variation in the probability of selecting dispositional alternatives. Among the top five contributing variables, two were related to prior history (prior out-of-home placements and prior felonies), two were sociodemographic (age and African American), and one was a process variable (District Five). Current offense-related variables then entered the picture, since offense seriousness was the sixth largest contributor. The categories of factors influencing the selection of dispositional alternatives can be roughly ordered by significance as follows: (1) prior history, (2) sociodemographic, (3) process, and (4) current offense-related. Note how this contrasts with the factors related to the motioning decision that were dominated to a much greater extent by current offense-related factors.

⁴¹ We are using the regression analysis to test the “null hypothesis” that there are no differences between the dispositional alternatives according to the factors that we include in the regression analysis.

Table 3-2: Factors Related to Selection of Dispositional Alternatives

Variable	Adult Certification vs. EJJ	Motioned-Disposed Juvenile vs. EJJ
Prior Placement *	▼	▲
Age *	▲	▼
Prior Felony *	▲	
African American	▲	▲
District Five	▲	▲
Offense Seriousness *	▼	▼
Supervised	▼	▼
Drug Offense *		▲
Detention		▼
Hispanic		▼
Gender		▲
Firearm *		▼
Other Weapon *		▲
Other Offense *		▲
Asian American	▲	
Adult Codefendant *	▲	
Prob. of Motioning	<u>NS</u>	<u>NS</u>

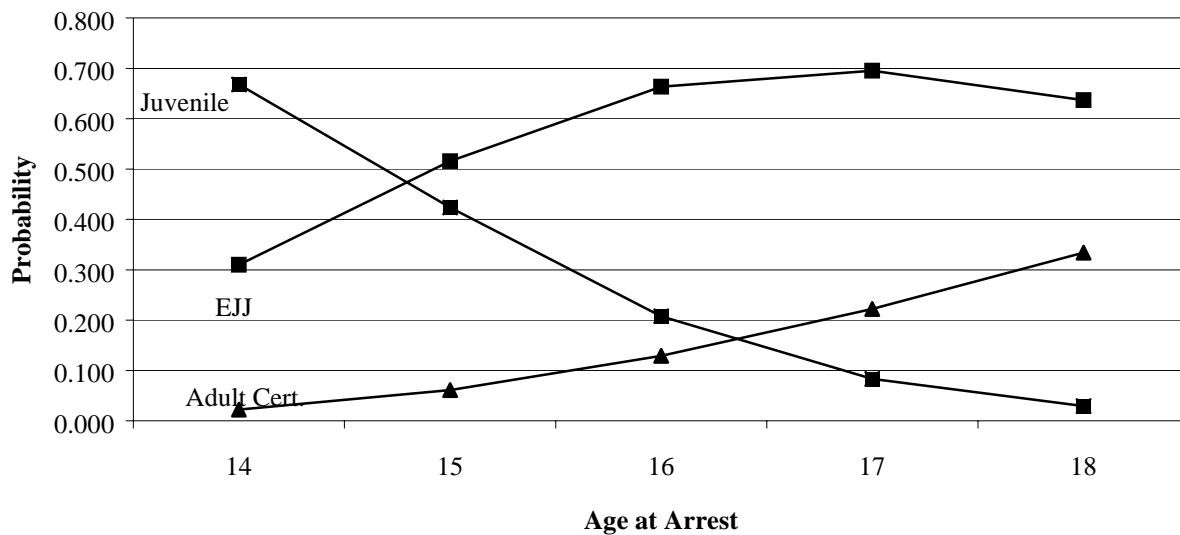
- ▲ **Positive Relation**
- ▼ **Negative Relation**
- * **Intended Factors**

3.4.1. Intended Differences

Age. Table 3-2 shows that Age was a highly significant predictor of both the adult certification vs. EJJ and the juvenile vs. EJJ dispositions. Every increase in age by one year increased the odds that the juvenile offender would be adult certified rather than receiving an EJJ disposition by a factor of 1.6 and also increased the odds of an EJJ rather than a juvenile disposition by a factor of 2.6. Figure 3-2 (based on the data in Table C-9) shows that the probability of adult certification increased and the probability of a juvenile disposition decreased almost

monotonically with age. The probability of an EJJ disposition increased monotonically through age 16, increased at a slower rate between 16 and 17, and finally decreased between 17 and 18, just as the probability of adult certification increased substantially.

Figure 3-2: Probability of Dispositional Alternatives by Age

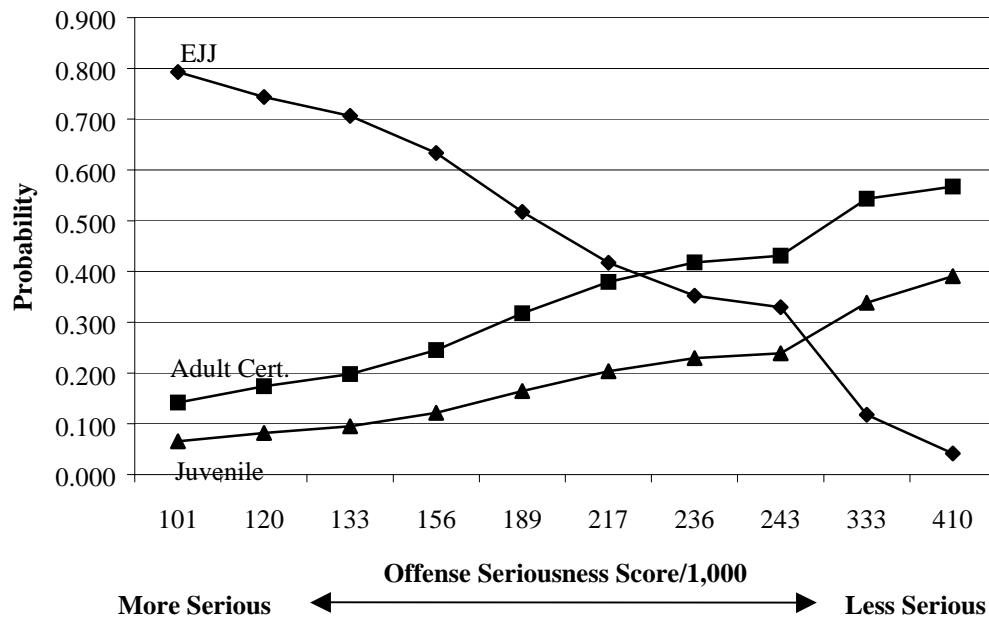


Current Offense. Only two of the current offense variables (offense seriousness and whether the case involved an adult codefendant) were significantly related to the probability of adult certification rather than an EJJ disposition. As expected, an adult codefendant increased (almost doubled) the odds that the juvenile offender would be adult certified rather than receiving an EJJ disposition. Unexpectedly, however, Table 3-2 shows that as the seriousness of the current offense increased, the odds of adult certification rather than an EJJ disposition decreased. In other words, adult certification became less likely and an EJJ disposition more likely as offense seriousness increased.

Figure 3-3⁴² (based on data contained in Table C-9) shows that the probability of an EJJ disposition increased as offense seriousness increased (holding other variables at their mean), as expected. An opposite trend is apparent for a juvenile disposition since the probability of this disposition increased as offense seriousness decreased, also in line with our expectations.

The trend for adult certifications is puzzling. The probability of an adult certification was much lower than the probability of an EJJ disposition for the most serious offenses. Further, the probability of adult certification increased as offense seriousness decreased, contrary to our expectation of a direct relationship between these two variables.

Figure 3-3: Probability of Dispositional Alternatives by Offense Seriousness Score

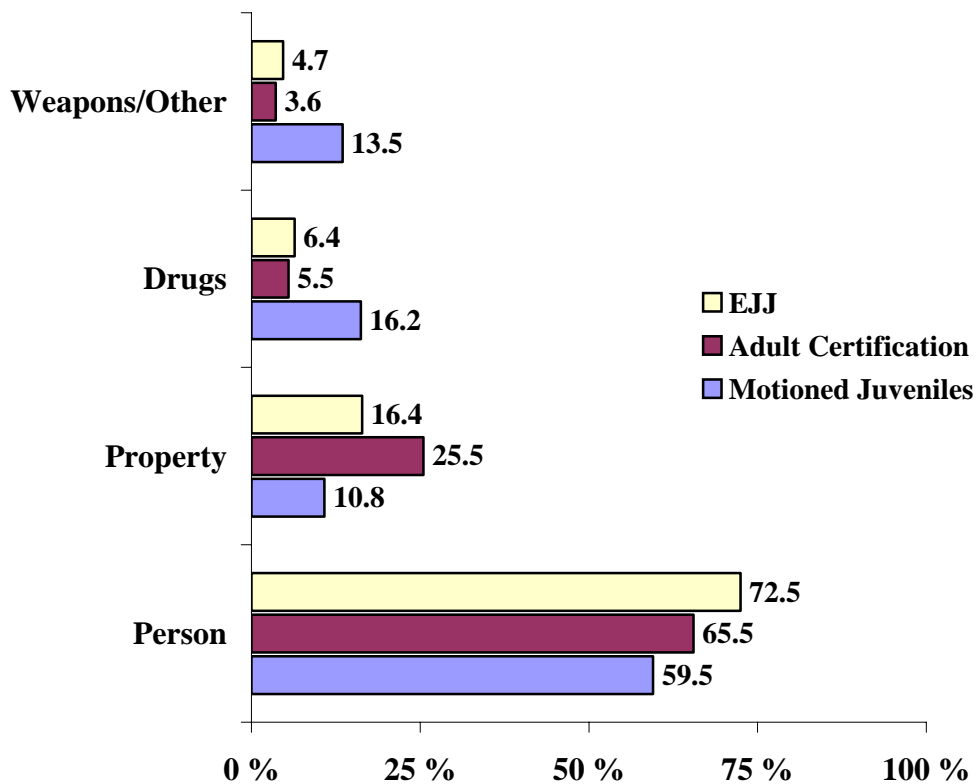


Several possible explanations were considered for these puzzling results. First, we considered whether differences in the distribution of offense types between EJJ, adult

⁴²Keep in mind that lower scores on the offense seriousness scale correspond to more serious offenses. Note that offense seriousness scores were divided by 1,000 for scaling purposes in Figure 3-2.

certifications, and juvenile cases might be responsible.⁴³ Figure 3-4 shows that distributional differences exist. Adult certified cases contained proportionately more property and fewer person offenders than cases with EJJ dispositions, also an unexpected result. We expected that the current offense distribution for the nominally more punitive disposition of adult certification would reflect greater proportionate representation for person offenses and less for property offenders than cases with the less punitive EJJ disposition.

Figure 3-4: Offense Type by Dispositional Alternative



⁴³ For the sake of argument, assume that the adult certified cases were overwhelmingly property offenders while the cases with EJJ dispositions were overwhelmingly person offenders. In this hypothetical exercise, adult certified cases and cases with an EJJ disposition might have similar average offense seriousness scores, but in the former instance they would be for property offenses while in the latter instance they would be for person offenses. We would expect the probability of adult certification to be low for property offenders and the probability of an EJJ disposition to be high for person offenders. Consequently, the probability of an EJJ disposition for any given offense seriousness score in this example would be expected to be higher than the probability of adult certification. This hypothetical example makes a case for separating the effect of the offense type (person, property, drug, or other) from the offense seriousness score.

To untangle the effect of the type of offense from offense seriousness, the relationship between offense seriousness and dispositional alternative was investigated separately for each type of offense (person, property, drug, and other). The results are shown in Figure 3-5. Our expectation was that once the probabilities were disaggregated by offense type, both the probability of adult certification and an EJJ disposition would increase as offense seriousness increased.

Figure 3-5 Probability of Dispositional Alternatives by Type of Offense

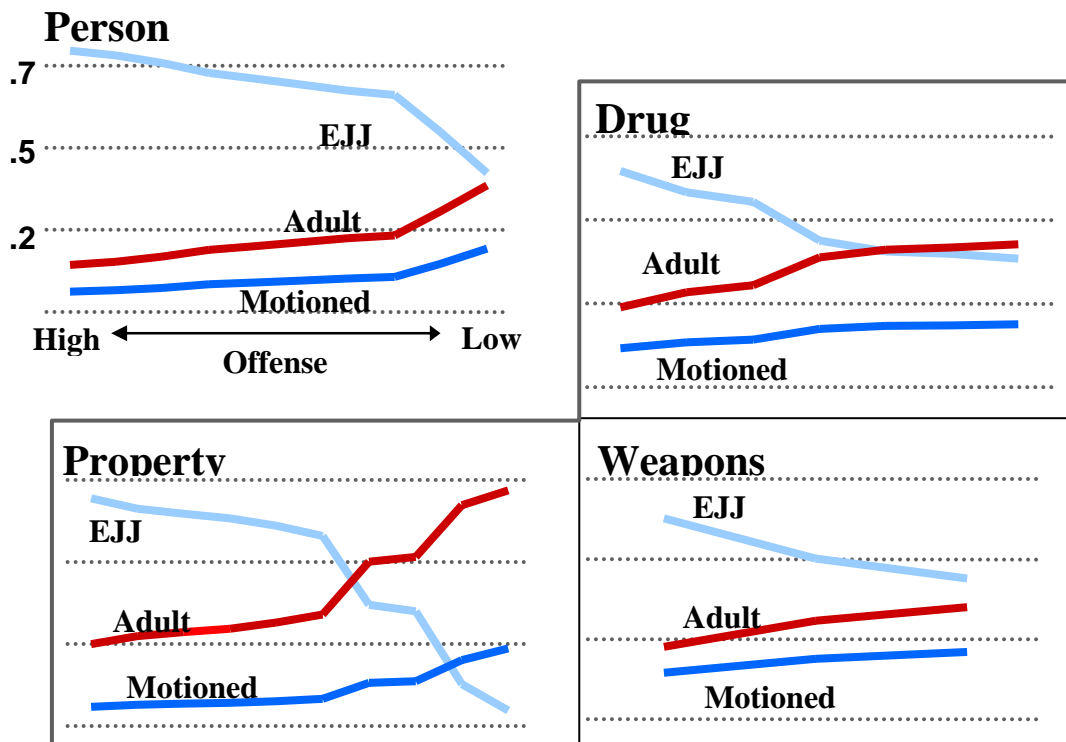


Figure 3-5 shows that the aggregate trends held for each offense type, contrary to our expectations. That is, (1) the probability of adult certification was much lower than the probability of an EJJ disposition for the more serious offenses, and (2) the probability of adult certification increased as offense seriousness decreased, across all offense categories. Thus, distributional differences cannot explain the highly similar relationships observed between the

probability of adult certification and offense seriousness across all offense types.⁴⁴ At a minimum, these results suggest that adult certification is not targeting its intended offender population, the “worst of the worst.”

The aggregate trends held even for the most serious current offenses, Murder 1 and Murder 2. Of the 10 offenders charged with Murder 1 in the weighted sample, six received an EJJ disposition and four were adult certified. Of the 24 offenders charged with Murder 2, half were adult certified while nine of the remaining 12 received an EJJ disposition and the other three were motioned-disposed juveniles. The Murder 1 and 2 offenders who were adult certified were significantly older than those disposed EJJ, with average ages of 17.1 and 16.2, respectively.

Since distributional differences cannot explain our puzzling results, we offer three other theories for these findings. The first theory is that the juvenile court “system” views EJJ as a more punitive and onerous disposition than adult certification.⁴⁵ This theory was first brought to our attention when we found several instances of juveniles pleading to the adult certification, rather than the EJJ disposition. After all, an EJJ disposition extends the age of juvenile court jurisdiction until age 21. Thus, a 16-year-old offender with an EJJ disposition can expect five years of juvenile court supervision, including (in many cases) at least one year of confinement.

⁴⁴Note that the inverse relationship observed between offense seriousness and the probability of adult certification was more pronounced for property offenders (probabilities range from .25 to .72, from most to least serious property offense) than for person offenders (probabilities range from .14 to .39, from most to least serious person offense), drug offenders (probabilities range from .12 to .19, from most to least serious drug offense), and other offenders (probabilities range from .15 to .21, from most to least serious “other” offense). Thus, for the least serious offenses, property offenders were almost twice as likely to be certified than person offenders. Also, the least serious property offenders were almost three times as likely to be certified as the most serious property offenders.

⁴⁵We refer specifically to the juvenile court “system” comprised of the court, the prosecutor, and the defense, as the majority of dispositions for a motioned juvenile come about as a result of a plea negotiation (similar to adult sentences).

If this same offender was adult certified, he or she could reasonably expect to complete an adult sentence and thus remove his- or herself from court supervision in a much shorter period of time.

An inversion of the perceived severity of adult certification and EJJ dispositions was not intended by the authors of the legislation that created EJJ but it would explain the pattern of results we observed. Specifically, the “inversion” hypothesis would explain why EJJ dispositions are more likely than adult certification for the most serious offenses (across all offense types) since the most serious offenders would be receiving the most punitive disposition (EJJ), in line with our expectations. It would also explain why adult certification becomes more likely and an EJJ disposition less likely as offense seriousness decreases since the least serious offenders would be increasingly likely to receive the least serious disposition (adult certification).

Secondly, the explanation of why serious offenders are more likely to receive EJJ dispositions than adult certification may result from the reluctance of judges to send juveniles charged with serious offenses to adult criminal court, where they are at risk for incarceration in an adult facility for a relatively long period of time. There are persistent perceptions, supported by research, that juveniles face increased safety risks (assault, rape, and mental health problems) when incarcerated in an adult facility (see, e.g., Bishop and Frazier, 2000). The net effect of this strategy would be the retention of a substantial number of serious offenders in the juvenile justice system as EJJ. This would explain the low probability of adult certification and the much higher probability of an EJJ disposition for the most serious offenses.

Thirdly, to explain why minor offenders are more likely to be adult certified than to receive an EJJ disposition, we turn our attention to relatively older, minor offenders motioned for adult certification. The defense strategy for these offenders may take into consideration the

probability of the offender's re-offending or being revoked for a technical violation (after disposition) when deciding how to plea. If the risk of recidivism is judged to be relatively high (often the case among property offenders),⁴⁶ an adult sentence may be relatively appealing⁴⁷ since, with an EJJ disposition and a high likelihood of re-offending, the juvenile would likely serve at least part of the juvenile disposition as well as the stayed adult sentence upon revocation. The net effect of this strategy would be the transfer of a substantial number of minor property offenders to the criminal justice system, creating the effect that the probability of adult certification increases as current offense seriousness decreases.

Table 3-2 shows that even though offense seriousness and whether there was an adult codefendant were significant predictors of adult certification rather than an EJJ disposition, they were not as influential as many other predictors. *Adult Codefendant* in particular was one of the least influential predictors.

On the other hand, the probability of a motioned-juvenile rather than an EJJ disposition was significantly related to several current offense variables (*Offense Seriousness Score, Drug Offense, Firearm, Other Weapon, and Other Offense*). As expected and as shown in Figure 3-3, the probability of an EJJ rather than a motioned-juvenile disposition increased as offense seriousness increased.

Being charged with a drug or "other" (predominantly weapons offenses) offense increased the odds of a motioned-juvenile rather than an EJJ disposition, by factors of two and 1.5, respectively. Apparently, the courts are willing to retain drug offenders and offenders

⁴⁶ Property offenders were shown to reoffend at higher rates than other types of offenders in a program evaluation report on Chronic Offenders, Office of the Legislative Auditor, State of Minnesota, February 2001.

⁴⁷ Regardless of whether the case results in adult certification or an EJJ disposition, the offender will accrue a criminal history point should they be convicted of a new offense in the future, providing little motivation to fight for one type of disposition over the other.

charged with weapon offenses in the juvenile system, perhaps to keep juvenile programming options open.

Firearm involvement (including use, display, or threat) during the commission of the current offense more than doubled the odds (2.4) that the juvenile offender would receive an EJJ rather than a motioned-juvenile disposition, compared to an offender who did not use any weapon. The odds of a motioned-disposed juvenile rather than an EJJ disposition for offenders who used a weapon (other than a firearm) were twice as great as the odds for a juvenile who did not use a weapon.

Table 3-2 shows that many other predictors exerted more influence than the current offense predictors on the probability of a motioned-juvenile rather than an EJJ disposition. Apparently, current offense factors play a less important role in the selection of a dispositional alternative than they do in predicting the probability of motioning.

Prior Offenses. Having a prior delinquent felony increased the odds of adult certification rather than an EJJ disposition by a factor of more than five. Table 3-2 shows that this was a highly influential predictor of dispositional alternative.

Prior Out-of-Home Placements. Prior out-of-home placements was the single most important predictor of dispositional alternatives. Whether the offender had ever experienced an out-of-home placement was a significant predictor of both the adult certification vs. EJJ and the juvenile vs. EJJ dispositions. Having at least one prior out-of-home placement increased the odds of an EJJ disposition rather than adult certification by a factor of more than five and almost tripled the odds of a juvenile as opposed to an EJJ disposition. A prior out-of-home placement seems to act as a mitigating factor, increasing the odds for retaining the juvenile in the juvenile justice system.

This finding was contrary to our expectations. Recall that we previously speculated that a prior out-of-home placement might be indicative of a lack of responsiveness to juvenile programming and thus increase the odds of an EJJ disposition or adult certification. Our data suggest the opposite.

3.4.2. Other Differences

Sociodemographic. Besides *Age*, two other sociodemographic variables related to race, *African American* and *Asian American*, were significant predictors of adult certification rather than an EJJ disposition. The odds of African American juveniles being adult certified were more than five times those of White juveniles. Asian American juveniles were more than twice as likely as White juveniles to be adult certified. *African American* is one of the most and *Asian American* one of the least influential predictors of adult certification rather than an EJJ disposition.

African American, *Hispanic* and *Gender* were significant predictors of a juvenile rather than an EJJ disposition. The odds of African American juveniles receiving a juvenile disposition rather than an EJJ disposition were more than three times those of White juveniles. Hispanic juveniles were 2.7 times more likely to receive an EJJ rather than a juvenile disposition than White juveniles. Females were almost three times as likely as males to receive a juvenile disposition as opposed to an EJJ disposition.

Collectively, the results regarding the influence of race on the type of dispositional alternative suggest that the EJJ disposition is reserved primarily for White (and to a lesser extent Hispanic) juveniles. Odds are high that African American offenders who have been motioned will receive either adult certification or a juvenile disposition but not an EJJ disposition. Further, Asian American juveniles were more than twice as likely as white juveniles to be adult certified.

Processing. Processing variables (*District Five*, *Detained*, and *Supervised*) were also significant predictors of the dispositional alternative. Whether the offender's case was disposed in District Five was one of the five most important predictors of the dispositional alternative. A case disposed in District Five was 10.5 times as likely to be adult certified as to receive an EJJ disposition and also more than 11 times as likely to receive a motioned-disposed juvenile rather than an EJJ disposition. In other words, there is almost no chance of an EJJ disposition in District Five.

Whether the offender was under court-ordered supervision at the time of the current offense was a significant predictor of dispositional alternatives. A juvenile offender under supervision was almost twice as likely as a similar juvenile not under supervision to receive either an EJJ rather than adult certification or an EJJ rather than a motioned-disposed juvenile disposition. We conclude that being under some form of court-ordered supervision at the time of the current offense increases the probability that a juvenile offender will receive an EJJ disposition. Apparently, the court feels that these juveniles need additional supervision beyond what they would receive as conventional juveniles, but still feels that they should be retained in the juvenile rather than adult criminal justice systems.

Whether the offender had a pre-dispositional out-of-home placement was predictive of an EJJ rather than a juvenile disposition. Such placements would be primarily secure detention but could also include other types of out-of-home placements (e.g., emergency placement with a social welfare agency). Having a pre-dispositional out-of-home placement almost quadrupled the odds that the juvenile offender would receive an EJJ rather than a juvenile disposition, compared to a juvenile without such a placement.⁴⁸ Thus, a pre-dispositional out-of-home

⁴⁸ As in Chapter 2, we re-ran the regression omitting *Detention* as a predictor, in the case that this variable was masking race and offense seriousness effects. There was very little difference between the two sets of coefficients.

placement acts as an aggravating factor in the choice between a motioned-juvenile and the more punitive EJJ disposition. These results are consistent with a long line of research that shows that pre-dispositional detention is associated with more punitive dispositions. They also suggest that a review of the use of secure detention in Minnesota may be warranted since this variable is so influential on the probability of an EJJ rather than a motioned-disposed juvenile disposition.

It is noteworthy that *Lambda*, based on the probability of motioning, was not a significant predictor of the dispositional alternative. We speculated that there would be a relationship between the probability that juvenile offenders would be motioned and the severity of the sanction that they received such that the juveniles most likely to be motioned would receive the harshest sanctions. That this variable was not significant suggests that the decision to motion and the selection of a dispositional alternative are independent decisions. While motioning defines the pool of offenders that will be subject to EJJ dispositions, adult certification, and motioned-disposed juvenile dispositions, its influence stops there, and a different decisional calculus regulates the selection of dispositional alternatives.

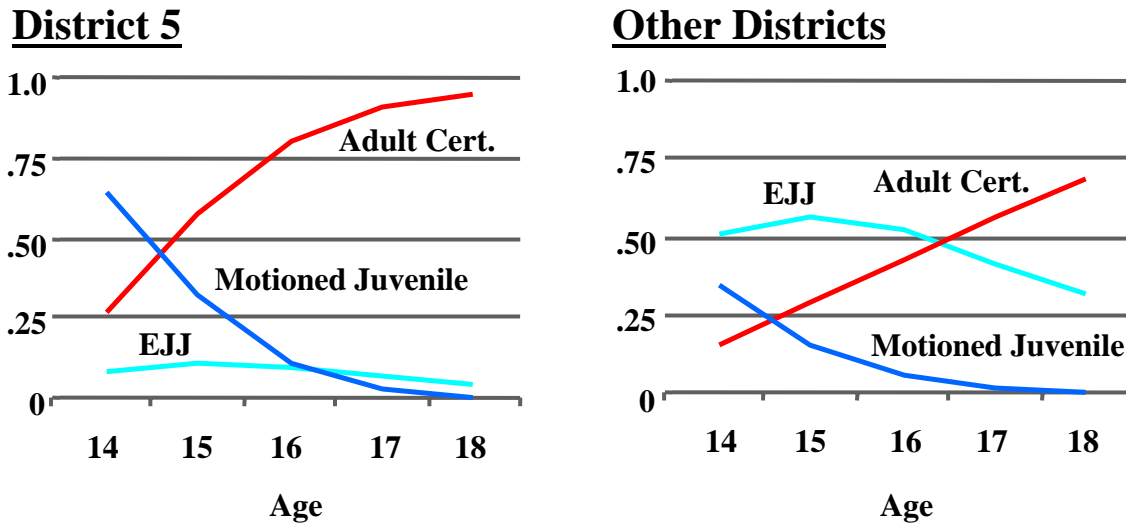
We know that these two decisions are made by different sets of actors, which may explain some of the differences. The decision to motion is made largely by the county attorney while the selection of a dispositional alternative is usually negotiated by the county attorney and defense lawyers, subject to the approval of the judge. Thus, the decision to motion is a “threshold” (largely regulated by the county attorney) that must be passed for any juvenile to be disposed as EJJ or adult certified, but after that threshold has been passed, the motioning decision fails to exert any additional influence on the decision regarding dispositional alternatives.

In both regressions, identical sets of variables predicted adult certification rather than an EJJ disposition. When predicting a juvenile rather than an EJJ disposition, two variables that were marginally significant in the regression including *Detention*, became non-significant in the regression without *Detention*, including *African American* and *Other Offense*. This suggests that the effect of *Detention* on the type of dispositional alternative is independent of race and offense seriousness.

3.5. Offender Scenarios

We next use the two scenarios described in Section 2.5 in Chapter 2 (one for a serious person offender and the other for a property offender) to study the selection of dispositional alternatives for these types of offenders. Turning first to the Scenario One offender (serious juvenile offender charged with assault), Figure 3-6 displays the probability of such an offender receiving each dispositional alternative by age in District Five and the other districts, respectively, in side-by-side graphics. One striking difference between the two graphics in Figure 3-6 is the almost nonexistent probability of an EJJ disposition at any age in District Five. This contrasts with the other districts where the probability of an EJJ disposition exceeds .5 for ages 14 through 16, making it the most likely disposition for these ages. Only at ages 17 and 18 does the probability of adult certification exceed the probability an EJJ disposition in these districts. Note that the probability of an EJJ disposition in the other districts increases between the ages of 14 and 15, thereafter declining with every year of age, but never falling below .3.

Figure 3-6: Probability of Dispositional Alternatives by Age for Person Offender Scenario



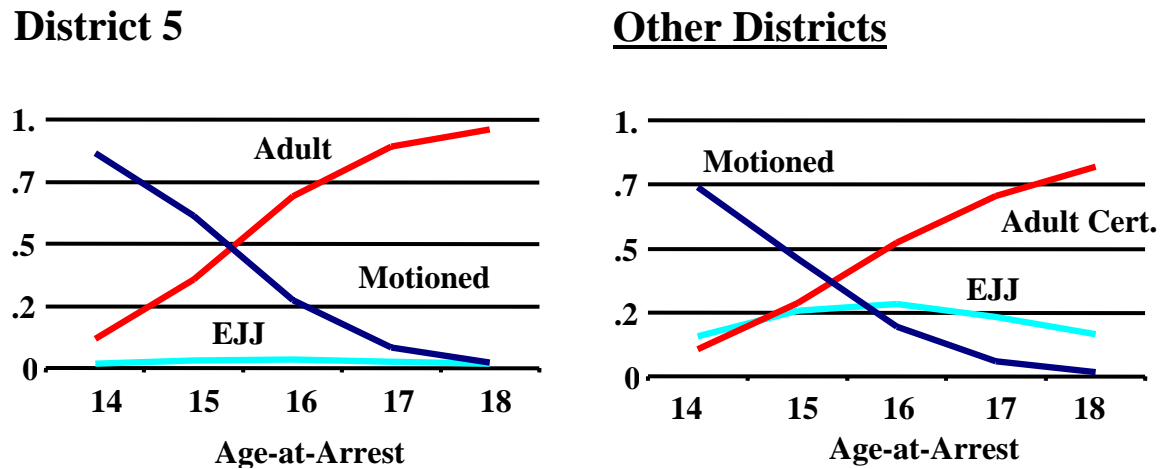
In both graphics, the probability of adult certification increases and the probability of a juvenile disposition decreases with every year of age. In District Five, however, the probability of adult certification increases at a much faster rate and is always larger (at any age) than in the other districts. At ages 17 and 18, for example, the probability of adult certification in District Five exceeds .9 while in the other districts it never exceeds .7 at any age. Note also that the probability of a juvenile disposition is higher at every age for juveniles from District Five than for juveniles from other districts.

Next, we examined how the probability of receiving the three dispositional alternatives varied by age and also by whether the offender was from District Five for a juvenile with the Scenario Two profile (charged with Burglary 3) from Chapter Two. The results are shown in Figure 3-7, which displays the probability of receiving each dispositional alternative by age in District Five and the other districts, respectively, in side-by-side graphics.

Again we note the almost non-existent probability of an EJJ disposition at any age in District Five. This contrasts with the other districts where the probability of an EJJ disposition

increases between the ages of 14 and 15 and also between the ages of 15 and 16, thereafter decreasing with every additional year of age. Thus, the highest probability of an EJJ disposition outside of District 5 ($p = .573$) occurs at age 16.

Figure 3-7: Probability of Dispositional Alternatives by Age for Scenario Two (Property Offender)



In both figures, the probability of adult certification increases and the probability of a juvenile disposition decreases with every year of age. In District Five, however, the probability of adult certification increases at a much faster rate and is always larger (at any age) than in the other districts. At age 18, for example, the probability of adult certification in District Five is .92 while in the other districts this probability never exceeds .6 at any age. Note also that the probability of a juvenile disposition is higher at every age for juveniles from District Five than for juveniles from other districts.

3.6. Conclusions

Only one intended factor (prior offense record) strongly distinguished EJJ's from adult certifications in the intended direction. Age and current offense factors (offense seriousness and adult codefendant, a culpability factor), also distinguished the two but were much less influential. Most current offense-related factors failed to distinguish the two dispositional alternatives,

including number of charges (a culpability factor), whether the offense involved a firearm or a weapon other than a firearm, victim injury, and type of offense. Thus, person offenders, offenders who used firearms, and offenders who injured a victim were just as likely to be EJJ as to be adult certifications. Significantly and unexpectedly, the probability of adult certification was found to increase as the seriousness of the current offense decreased, suggesting that this alternative is not being targeted as intended. Number of prior out-of-home placements, which reflects responsiveness to juvenile programming, was highly significant but not in the expected direction.

The trend for the offense seriousness of adult certifications is puzzling. The probability of an adult certification is much lower than the probability of an EJJ disposition for the most serious offenses. Further, the probability of adult certification increases as offense seriousness decreases, contrary to our expectation of a direct relationship between these two variables. We were able to rule out differences in the current offense distribution as a possible explanation for these results. The results suggest that the adult certification dispositional alternative is not targeting its intended offender population, the “worst of the worst.”

We offered three theories for these findings. First, that the juvenile court “system” views EJJ as a more punitive and onerous disposition than adult certification. Secondly, the explanation of why serious offenders are more likely to receive EJJ dispositions than adult certification may result from the reluctance of judges to send juveniles charged with serious offenses to adult criminal court, where they are at risk for incarceration in an adult facility for a relatively long period of time. Thirdly, to explain why minor offenders are more likely to be adult certified than to receive an EJJ disposition, we turn our attention to relatively older, minor offenders motioned for adult certification. The defense strategy for these offenders may take into

consideration the probability of the offender's reoffending or being revoked for a technical violation (after disposition) when deciding how to plea. If the risk of recidivism is judged to be relatively high (often the case among property offenders), an adult sentence may be relatively appealing since, with an EJJ disposition and a high likelihood of reoffending, the juvenile would likely serve at least part of the juvenile disposition as well as the stayed adult sentence upon revocation.

Motioned-disposed juveniles differed from EJJs according to a couple of intended factors. They were younger and less serious in their current offenses than EJJs. They were also more likely to be charged with drug and "other" offenses (primarily weapons offenses) than EJJs. Unexpectedly, motioned-disposed juveniles were significantly more likely to have had at least one prior out-of-home placement (indicating that they probably had some programming history) and to have used a weapon other than a firearm (rather than using no weapon at all) with their current offense than EJJs. Use of a firearm, as expected, increased the odds of an EJJ rather than a motioned juvenile disposition. Based on the intended factors, the motioned-disposed juveniles appear to be younger and generally less serious in their delinquency than EJJs.

Contrary to the expectations of the authors of the 1994 reforms, other sociodemographic variables (race and to a lesser extent, gender) were predictive of the dispositional alternative received. African American and, to a lesser extent, Asian American juveniles were much more likely to be adult certified than White juveniles. Since African American juveniles were also much more likely to receive a juvenile than an EJJ disposition, we conclude that EJJ seems to be a disposition reserved predominately for White juveniles. Females were found to be more likely to receive a juvenile rather than an EJJ disposition than males, suggesting that the offender's gender may also be a mitigating factor with regards to dispositional alternative.

Among the process variables, whether the offender was from District Five was a significant predictor of both the adult certification vs. EJJ and the motioned-disposed juvenile vs. EJJ dispositions. Both adult certification and motioned-disposed juvenile dispositions were much more likely than an EJJ disposition in District Five, since the chances of the latter dispositional alternative were almost nonexistent. The significance of this variable was probably not intended by the authors of the reforms since it is a vivid example of “justice by geography.”

A pre-dispositional out-of-home placement increased the odds that the juvenile offender would receive an EJJ rather than a juvenile disposition, consistent with a long line of research that shows that pre-dispositional detention is associated with more punitive dispositions. These results also suggest that a review of the use of secure detention in Minnesota may be warranted since this variable is so influential on the selection of EJJ rather than motioned–juvenile dispositions. Being under some form of court-ordered supervision at the time of the current offense increased the probability that a juvenile offender would receive an EJJ disposition rather than a juvenile disposition or adult certification. Apparently, the court feels that these youth need additional supervision beyond what they would receive as juveniles, but still feels that they should be retained in the juvenile rather than adult criminal justice systems. The probability of motioning did not significantly influence the selection of dispositional alternatives, suggesting that motioning and selection of the dispositional alternative are independent processes.

What conclusions can we draw about whether the dispositional alternatives are targeting their intended offender populations? The evidence is mixed. Recall that the independent variable categories can be ordered according to their capacity to predict dispositional alternatives as follows: prior history, sociodemographic, process, and current offense. This ordering contrasts with the intentions of the drafters of the 1994 reforms who gave primary importance to

the seriousness of the current offense and history of prior delinquency and secondarily to offender culpability and the juvenile's programming history.

Current offense variables exert much less influence on the selection of dispositional alternatives than they did on the decision to motion. Prior offense history was much more important than the current offense variables for predicting dispositional alternatives. Two of the three variables related to offender culpability were significant and in the expected direction but only one of these, age, actually contributed much to explaining the selection of dispositional alternatives. The one variable thought to reflect responsiveness to juvenile programming, number of prior out-of-home placements, was highly significant but not in the expected direction.

Other factors, not intended by the authors of the 1994 reforms, also influenced the probability of selection of the dispositional alternatives. It is unlikely that the reformers intended that African American and Asian American juveniles would be much more likely to be adult certified than Whites and Hispanics. Likewise, they probably did not intend for gender to influence whether a motioned juvenile received an EJJ or a conventional juvenile disposition.

Consequently, our assessment of whether the dispositional alternatives are targeting their intended offender populations is mixed. Both intended and unintended factors influence the selection of dispositional alternatives. Further, several of the intended factors, while significant, were not in the direction intended.

Only one current offense variable, offense seriousness score, was significant. Current offense factors such as whether the offense was person-related, involved firearm or other weapon use, and whether victim injury occurred were not significant predictors. Further, offense seriousness was less important than whether the offender was an African American or whether

the case was processed in District Five. Similarly, the offender's age was less influential than these two unintended variables in predicting adult certification rather than an EJJ disposition. We found little evidence that factors related to offender culpability, other than the offender's age, exerted much influence on the selection of dispositional alternatives. *Since most current offense and offender culpability factors have little or no influence on the probability of adult certification rather than an EJJ disposition, we conclude that adult certification and EJJ are not targeting their intended offender populations, thereby possibly compromising public safety. In a reversal of intentions, EJJ's are apparently the "worst of the worst" while adult certifications are the "less bad of the worst."*

Chapter 4: Case Processing After Selection of the Dispositional Alternative

4.1. Introduction

The designation of an offender as an EJJ has implications for public safety as well as the types of services and sanctions that the offender will receive. EJJ was expected to enhance public safety in two ways. First, the Task Force expected that EJJs would be subjected to enhanced supervision and surveillance while under court supervision, compared to conventional juveniles. Feld (1995a) made this point: “Assuming that the “worst of the worst” will be certified, the mandatory EJJ provisions subject the “less bad of the worst” *to more stringent controls than those ordinarily available in juvenile courts*” (p. 1044, emphasis added). Secondly, the Task Force posited that the threat of a prison sentence would deter the juvenile from reoffending (“specific deterrence”⁴⁹). In the words of the Task Force, “It (i.e., EJJ) will give the juvenile one last chance at success in the juvenile system, *with the threat of adult sanctions as an incentive not to reoffend*” (p. 32-33, emphasis and parenthetical explanation added).

On the other hand, EJJ designation was also designed to retain juveniles who might be responsive to juvenile programming in the juvenile justice system and to provide them with enhanced services. Again quoting the Task Force, “The juvenile court, for a Serious Juvenile Offender (later known as EJJ) will be very similar to adult court, *with the exception that juvenile treatment would be available*” (p. 32-33, emphasis and parenthetical explanation added).

Further, subsidy funds were created to provide for the purchase of additional services for EJJs

⁴⁹ *Specific* deterrence refers to the inhibition of criminal activity of the person being punished as the result of the imposition of that punishment. Specific deterrence is often contrasted with *general* deterrence, which refers to the prevention of criminal acts in the population at large by means of the imposition of punishment on persons convicted of crime (Gottfredson and Gottfredson, 1988).

and juvenile programming in smaller community-based facilities as opposed to large, congregate institutions.⁵⁰

In this chapter we examine preliminary data from a variety of sources to investigate whether EJJ are receiving the types of dispositions and services consistent with the Task Force's intent of enhanced control and rehabilitative services. We also investigate the types of sentences that adult certifications are receiving and how they compare to the dispositions of EJJ. The latter comparison may give insight into the relative punitiveness of the adult certification sentences and juvenile dispositions.

Also in this chapter, we investigate whether EJJ designation deters future reoffending (i.e., recidivism). The question of recidivism rates among the dispositional alternatives looms large given the public safety concerns raised in the last chapter. In recognition of the limitations of our preliminary recidivism data, however, we conclude by proposing a more valid model of recidivism, suitable for assessing the potential deterrent effect of an EJJ disposition.

4.2. Juvenile Court Dispositions

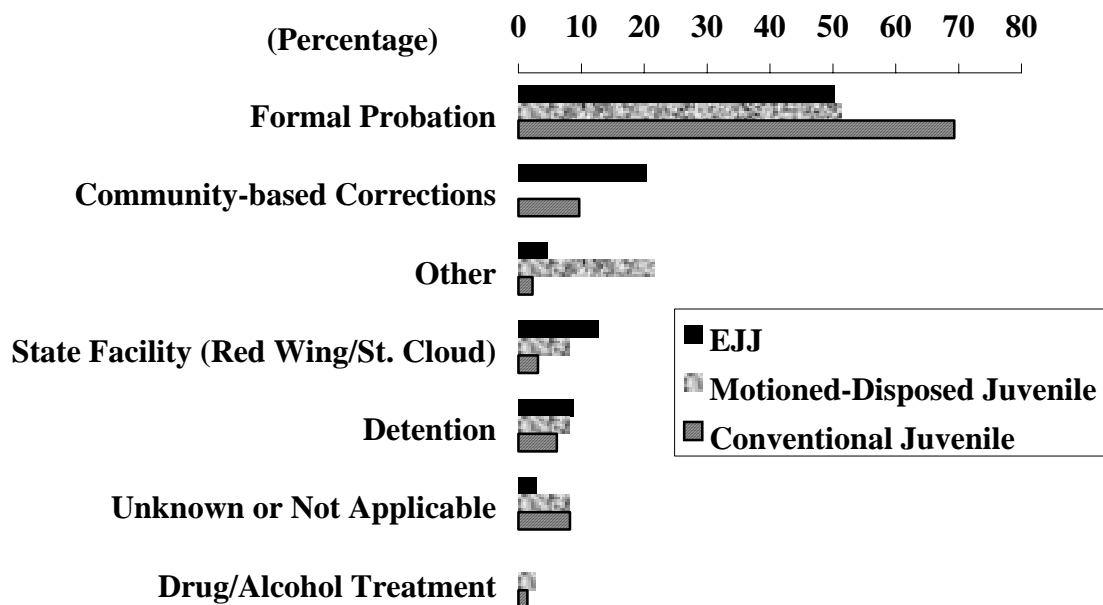
Figure 4-1 shows the distribution of juvenile dispositions received by the 820 motioned offenders in our (weighted) sample by the type of dispositional alternative. A majority of the offenders from each dispositional alternative received formal probation as their sanction. As expected, conventional juvenile offenders were more likely to receive formal probation (69 percent) than motioned-disposed juveniles and EJJ offenders (about 50 percent each).

Conversely, EJJ and motioned-disposed juveniles were more likely to be incarcerated (detention

⁵⁰ To obtain subsidy funding, each participating jurisdiction was required to submit a comprehensive plan to the Minnesota Department of Corrections describing the services it planned to provide to EJJ on a biennial basis. However, funding for services for EJJ was allocated on a per case basis. A participating jurisdiction developed a service plan for each EJJ and then received a specified sum with which to deliver and/or purchase the services specified by that plan (Torbet et. al., 2000). Originally, the Department of Corrections offered the counties \$7,815 per EJJ offender. As of July 1, 2001, the funding increased to \$9,500 for each EJJ juvenile although all subsidy payments were discontinued in 2002.

and Red Wing/St. Cloud) than conventional juvenile offenders. EJJ's were also more likely to be placed in community-based correctional facilities⁵¹ than conventional juveniles. Small numbers from each dispositional alternative received drug/alcohol treatment, and “other”⁵² sanctions or “unknown” sanctions.

Figure 4-1: Type of Juvenile Disposition by Dispositional Alternative



The majority of offenders from each dispositional category received traditional “in” (incarceration) or “out” (probation) sanctions, despite subsidy funding intended to increase dispositional options. For whatever reasons, judges are failing to utilize an expanded array of sanctions. An expanded array of sanctions and services would seem to be especially appropriate for the serious, multi-problem juveniles who receive EJJ dispositions. At this point, it is hard to

⁵¹Including, predominantly, “commitment to community corrections” and one or two cases each with electronic home monitoring, commitment to local group home, out-of-state placement, local residential juvenile programming, and home detention.

⁵² “Other” sanctions included anger management, community service, restitution, letter of apology to victim, informal probation, and psychiatric evaluation.

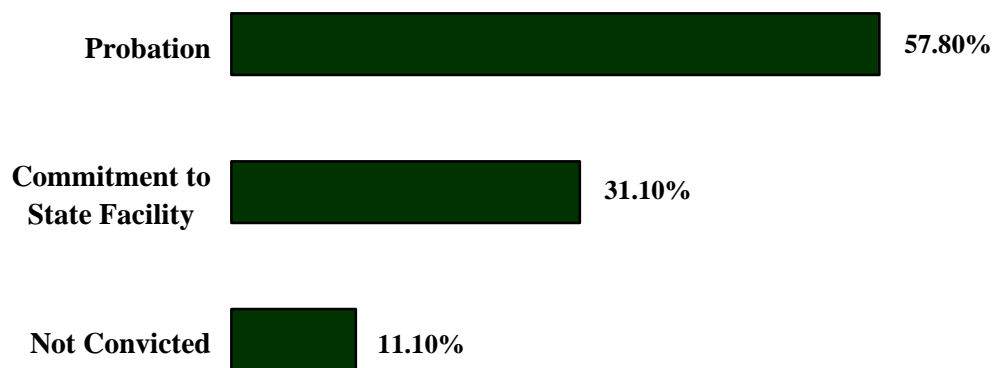
tell if the continued reliance on traditional dispositions is a function of programs not being available or is simply a reflection of judges relying on more familiar, traditional dispositions.

Thus, our data indicate that EJJ's are indeed subjected to greater control than conventional juveniles, as was the intention of the Task Force. They are more likely to be placed in Red Wing/St. Cloud, community-based correctional facilities, and detention centers than conventional juveniles.

4.3. Adult Sentences

Figure 4.2 shows the distribution of the 135⁵³ adult certifications in our weighted sample according to the type of sentence they received. The most frequent sentence was probation, followed by commitment to prison while there was a failure to convict in about 11 percent of the cases. About one third of the adult certifications received a commitment to a state prison, with an average pronounced sentence of about 91 months (about 7.6 years), ranging from 15 months to 306 months (25.5 years).

Figure 4.2: Type of Sentence for Adult Certifications



⁵³ There were 165 adult certification cases in our weighted sample, but we were unable to locate sentencing information on 30 cases.

About 58 percent of the adult certifications were placed on probation. Their average length of stay on probation was 66 months (5.5 years) with a range of 24 to 240 months (2 to 20 years). About 12 percent of adult certifications placed on probation were convicted of non-felony offenses. Residential juvenile programming was also ordered in about eight percent of the probation cases.

A stay of imposition had been ordered in 65.4 percent and a stay of execution in 30.7 percent of the adult certifications placed on probation.⁵⁴ Jail was ordered as a condition of probation in 88 percent and 100 percent of the cases with a stay of imposition or with a stay of execution, respectively. The average jail sentence was 160 days, with a range of 10 to 365 days.

Fines were ordered in 26 percent and restitution in 43 percent of the cases. The average amount of a fine was \$1,509, ranging from \$40 to \$6,000. The amount of restitution was specified in only 47 percent of the cases ordered to pay restitution. The average amount of restitution was \$2,698, ranging from \$200 to \$7,649.

Finally, it is instructive to compare the type of sentences received by the adult certifications with the dispositions received by EJJ's, motioned-disposed juveniles, and conventional juveniles. Figure 4.3 compares the percentage of each dispositional alternative that received probation or commitment to a community-based corrections facility. Note that while

⁵⁴There are two steps in sentencing: the imposition of a sentence and the execution of the sentence that was imposed. The imposition of sentence consists of pronouncing the sentence to be served in prison (for example, three years imprisonment). The execution of an imposed sentence consists of transferring the felon to the custody of the Commissioner of Corrections to serve the prison sentence. A stayed sentence may be accomplished by either a stay of imposition or a stay of execution.

If a stay of imposition is granted, the prison sentence is not pronounced, provided that until that date the offender complies with conditions established by the court. If the offender is in compliance with those conditions through the length-of-stay, the case is discharged, and for civil purposes (employment applications, etc.), the offender will not show a record of a felony conviction.

If a stay of execution is granted, a prison sentence is pronounced, but the defendant is not transferred to the custody of the Commissioner of Corrections) provided that through the length-of-stay, the offender complies with conditions established by the court. If the offender complies with those conditions, the case is discharged, but the offender continues to have a record of a felony conviction.

conventional juveniles still had the highest percentage sentenced to probation (69 percent), adult certification had the second highest percentage (58 percent). In almost every case, the adult certifications received jail time along with probation, which, because we counted jail among the community-based correctional facilities, made this group the most likely to receive a sentence to a community-based correctional facility. EJJ's were the next most likely to receive a commitment to a community-based correctional facility.

Figure 4-3: Percent Receiving Probation or Community-based Corrections Facility by Dispositional Alternative

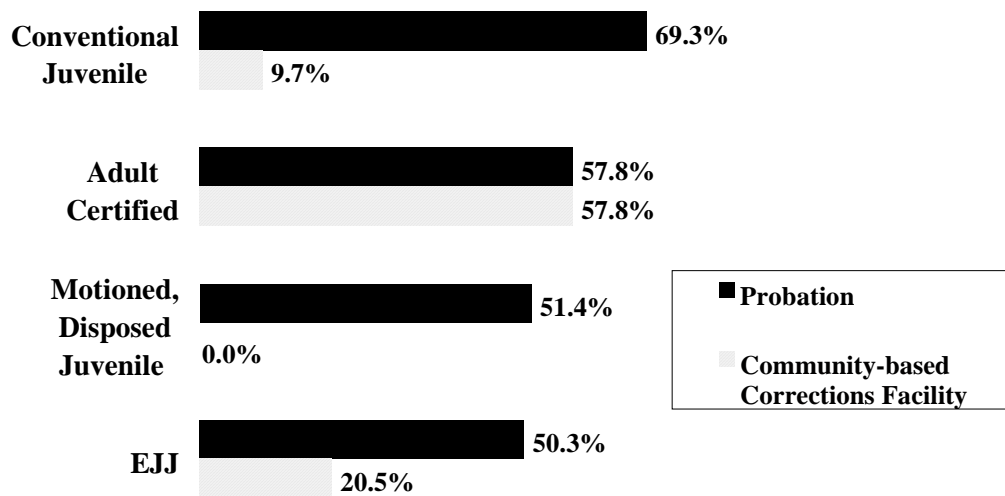
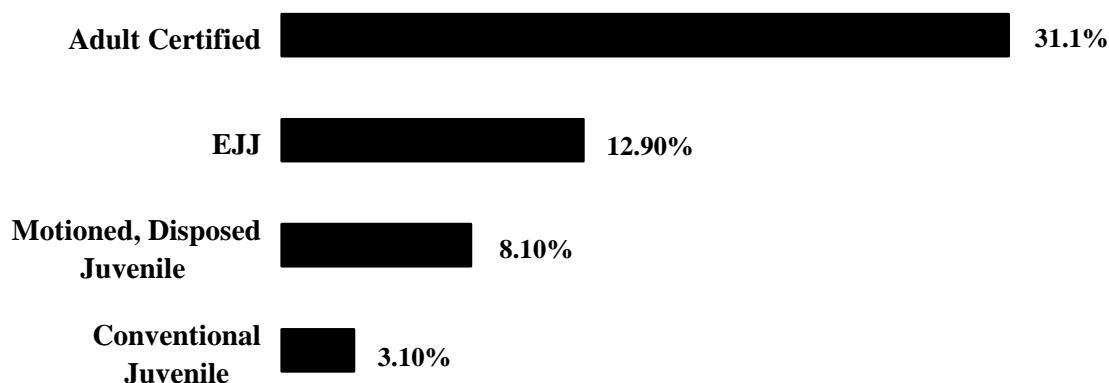


Figure 4.4 compares the percentage of each dispositional alternative that received a commitment to prison. Since sentencing in the criminal justice system is essentially binary (probation or imprisonment), and since there was a failure to convict in about 11 percent of the adult certifications, almost a third of the adult certifications received a commitment to prison. EJJ's were the next most likely to be committed (Red Wing\ St. Cloud), in about 13 percent of the cases. Thus, the adult certifications were about 2.5 times as likely as EJJ's to receive a commitment to a state institution.

Figure 4.4: Percent Receiving Commitment to State Facility by Dispositional Alternative



Adult certifications were both more likely to be imprisoned and to be placed on probation than EJJ's. Probation for the adult certifications was almost always accompanied with jail time. Whether the adult certifications were placed on probation or imprisoned depended on the type of current offense, as has been the case in other studies (see, e.g., Bishop and Frazier, 2000).⁵⁵ Property and drug offenders were much more likely to receive probation than imprisonment (75 percent and 100 percent, respectively). The split was about 50/50 for person offenders, with half being placed on probation and half imprisoned. In general, it would appear that adult certifications are receiving harsher sanctions than EJJ's.

4.4. Services Intended to be Provided to EJJ's

Unfortunately, we did not have data indicating which post-dispositional services each offender received. However, we were able to obtain proposals for EJJ programming submitted by participating jurisdictions to the Minnesota Department of Corrections (DOC), indicative of their intended spending/juvenile programming plan for 1999-2001. Basic services proposed to be offered by virtually all participating counties included drug testing and treatment,

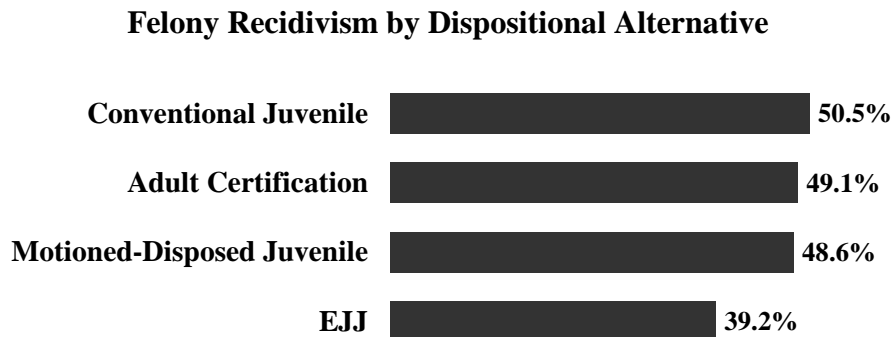
⁵⁵Overall, adult certifications placed on probation did not differ significantly by offense seriousness (as measured by the offense seriousness score) from those imprisoned.

psychological counseling, and various levels of supervision. In addition, virtually all of the counties proposed services for minorities. A number of counties also proposed additional services such as restitution, victim services, and transitional programming. Juveniles in some counties were to be offered educational services, vocational training, and/or independent living skills. The services proposed for subsidy funding emphasized supervision more than juvenile programming, but this varied by geography.

4.5. Preliminary Recidivism Results

In the following, recidivism is measured in two different ways: (1) as any new (i.e., post-dispositional) felony, gross misdemeanor, or misdemeanor court filing and (2) as any new felony court filing. In conjunction, these two measures, one broad and one narrow (but focusing more on serious offenses), give a more complete picture of recidivism than reliance on either measure in isolation would give. Juvenile offenders in this study were tracked for at least three years following disposition. Recidivism rates based on the two measures are shown in Figure 4-5 for motioned-disposed juveniles, conventional juveniles, adult certifications, and EJJ.

Figure 4-5: Preliminary Recidivism Results (two measures represented)



General Recidivism by Dispositional Alternative



When recidivism is viewed using the broadest stroke (general recidivism), the rate of recidivism varies considerably by disposition category. Roughly 70 percent of motioned-disposed juveniles, 66 percent of conventional juveniles, 64 percent of adult certifications, and 55 percent of EJJs recidivated. On the other hand, when felony recidivism was examined, we found that EJJs were significantly less likely to recidivate than offenders disposed of as conventional juveniles, adult certifications, or motioned-disposed juveniles. The recidivism rates of the latter three groups were similar using this narrow measure.

Findings from the two sets of measures reveal an interesting and unexpected result: EJJs are less likely to recidivate than offenders disposed of as conventional juveniles or motioned-disposed juveniles. We also note the relatively high recidivism rates for motioned-disposed juveniles, indicated by both measures of recidivism. The latter result might be a cause for concern since it suggests that motioned juveniles might be a risk to public safety. An alternative to the current “consensual” approach to selecting motioned disposed juveniles, such as use of a risk assessment instrument, might result in selection of better risks for this dispositional alternative.

These results must be interpreted cautiously because of two significant limitations in the way that recidivism⁵⁶ was measured. First of all, the results are not broken out by the specific type of disposition (in the grossest sense, incarceration vs. community-based), problematic because the type of disposition will determine the appropriate method to measure recidivism. If the juvenile was incarcerated (either in a state facility or locally in a detention center or jail), recidivism is measured from the date of release until recidivism occurs. Recidivism is measured in this fashion because incarcerated juveniles do not have the opportunities to recidivate while they are confined (by reason of limitations on their freedom of movement and near constant supervision and surveillance) that are available to juveniles who receive community-based sanctions. On the other hand, if the offender receives a community-based disposition such as probation or outpatient drug/alcohol treatment, recidivism is measured from the date of disposition till recidivism occurs since the juvenile has the opportunity to recidivate anytime after disposition.

The recidivism data presented in Figure 4-5 is measured from disposition to recidivism. Consequently, the “time-at-risk” for incarcerated juveniles is overstated since the incapacitative aspects of incarceration are ignored under this formulation. Since, as we saw earlier in this chapter, EJJ’s are more subject to incarceration than other types of offenders, the lower recidivism rate for EJJ’s may be a product of incapacitation.

Secondly, the recidivism results must be interpreted cautiously because the length of time that offenders are tracked varies. Thus, offenders whose cases were disposed early in 1997 were tracked for a longer period of time than, say, offenders whose cases were disposed late in 1998.

⁵⁶ A third limitation is the reliance on only one measure of recidivism, new court filings. As will be discussed in the next section, multiple measures of recidivism are preferable to reliance on a single index.

The lower recidivism rate for EJJ's is nonetheless surprising. We expected them to recidivate at rates similar to those for adult certifications. Part of the decision making calculus that we assume juvenile judges employ when selecting the appropriate dispositional alternative includes a subjective evaluation of the risk of re-offending, based on whatever relevant information the judge has on hand. As such, one would assume that offenders disposed of as adult certifications and EJJ's are considered more of a risk for recidivism than either conventional or motioned-disposed juveniles.

How then can we explain the relatively low recidivism rates observed for EJJ's despite the judgment that they are at high risk for recidivism? At this stage in the investigation, no definitive conclusions can be made, but we offer three hypotheses⁵⁷. First, the stayed sentence to adult prison that is part of an EJJ disposition may act as a deterrent to recidivism ("specific deterrence"). Second, the reduced recidivism rates for EJJ's may have occurred because they are more subject to incarceration than either motioned-disposed or conventional juveniles, and incarceration effectively reduces an offenders "street" time and thus their opportunity to reoffend. Third, EJJ offenders may be receiving services and supervision that are effective in rehabilitating juvenile offenders and preventing repeat offenses.

4.6. Elements of a Robust Design to Measure EJJ Recidivism

The preliminary recidivism analysis produced results that beg for additional investigation and explanation. A more robust research design to overcome the limitations of the preliminary measures of recidivism is needed to explain differences in recidivism among the dispositional alternatives. Nevertheless, this leads one to ask, if a more detailed examination of recidivism

⁵⁷ We must also be alert to the possibility that these results are artifactual, reflecting differences in charging practices (e.g., juvenile judges may be less likely to charge EJJ's with new offenses than criminal court judges are to charge waived juveniles with such offenses). Use of multiple measures of recidivism would help to preclude this possibility.

were to be undertaken, how would it be configured and what type of data elements would be needed? Three essential elements of such a robust recidivism design can be identified: (1) multivariate analysis of recidivism, (2) multiple measures of recidivism, and (3) offender matching.

First, if the objective is to isolate the impact of the type of dispositional alternative on recidivism, a multivariate analysis of recidivism that controls for other factors known to affect recidivism (e.g., age, prior record) is needed. The principal categories of factors that would need to be included in such an analysis would be those related to the offender's attributes (sociodemographic, offense related, and prior offense history), process-related variables (including the dispositional alternative and the specific sentence or disposition), and the sanctions and services that the offender received after disposition. We have already collected data on offender attributes as part of our analysis of the factors influencing the probabilities of the dispositional alternatives. The process-related variables would record any significant processing events that occurred between (and including) disposition and case closure, including probation revocations. Sanctions and services would include substance abuse treatment (inpatient and outpatient), intensive supervision, and sex offender treatment, among others.

Factors such as those just discussed would need to be included in a multivariate analysis to control for factors other than dispositional alternatives that might influence recidivism. Once we have controlled for the influence of these factors, any differences in recidivism could be attributed to the dispositional alternative.

Second, multiple measures of recidivism are desirable. Data on multiple measures of recidivism (arrests and convictions, as well as court filings) would significantly enhance the validity of our recidivism analysis. Arrests provide the broadest measure of recidivism, but

arrests do not guarantee that the offender actually committed the offense for which they were charged. Court filings have typically been screened by a prosecutor, providing a preliminary check on the validity of the arrest, while convictions provide even more checks for the validity of the arrest. Collectively, the three measures provide a comprehensive picture of recidivism, from its narrowest to its broadest conceptualizations. In addition to these measures, a robust design would also measure time till recidivism (for all three measures discussed above), abandoning the simplistic notion of recidivism as an all-or-nothing phenomenon.

Finally, matching EJJ and adult certifications with similar conventional juveniles provides additional insurance against factors (measured and unmeasured) that might confound recidivism results. The matching must be made according to carefully selected criteria, using factors known to influence recidivism (see, e.g., Bishop, Frazier, Lanza-Kaduce, and Winner, 1996).

4.7. Conclusions

In this chapter, we examined several outcomes of juvenile court processing and how they were affected by dispositional alternatives, including (1) juvenile dispositions and the sentences of adult certifications, (2) post-dispositional services provided to EJJ, and (3) recidivism. We found that the majority of offenders in each dispositional alternative received formal probation as their sanction. As expected, conventional juvenile offenders were more likely to receive formal probation than motioned-disposed juveniles and EJJ offenders. Conversely, EJJ and motioned-disposed juveniles were more likely to be incarcerated than conventional juvenile offenders. EJJ were also more likely to be placed in community-based correctional facilities than conventional juveniles. A majority of offenders from all dispositional alternatives received traditional “in” (incarceration) or “out” (probation) sanctions, despite the subsidy funding

intended to increase dispositional choices. At this point, it is hard to tell if the continued reliance on traditional dispositions is a function of programs not being available or is simply a reflection of judges relying on more familiar, traditional dispositions. Subsidy funds do not appear to have contributed to the development of a variegated juvenile programming infrastructure designed to support EJJ's. Indeed, proposals for EJJ programming during 1999-2001 submitted to the Minnesota DOC by participating jurisdictions clearly emphasized surveillance and control over juvenile programming and services. All things considered, our data indicate that EJJ's are indeed subjected to greater control than conventional juveniles, as was the intention of the Task Force, but contrary to intentions, are not receiving enhanced juvenile programming and services.

Adult certifications were both more likely to be imprisoned and to be placed on probation than EJJ's. Probation for the adult certifications was almost always accompanied with jail time. In general, it would appear that adult certifications are receiving harsher sanctions than EJJ's.

We also examined some preliminary data on recidivism that indicated EJJ's recidivated at a reduced rate compared to the other dispositional alternatives. However, we also noted two significant limitations of the recidivism measures we used that preclude any definitive statements about the relative rate of recidivism of EJJ's compared to the other dispositional alternatives. The first limitation was that the recidivism data was not broken out by the specific type of disposition (recidivism is measured differently for different types of dispositions). The second was that the length of time offenders are tracked varies. Finally, we discussed the configuration of a more robust study of recidivism designed to overcome these limitations. This design would feature a multivariate analysis of recidivism, multiple measures of recidivism, and offender matching.

Chapter 5 – Policy Implications

5.1. Introduction

Three findings from this study have profound policy implications for juvenile sentencing in Minnesota:

1. *The judicial district where the case was disposed influenced the probability of motioning and the type of dispositional alternative received: adult certification, EJJ, or juvenile.*
2. *The offender's race influenced the probability of motioning and the type of dispositional alternative received.*
3. *The EJJ disposition and adult certification are not targeting their intended offender populations.*

The purpose of this chapter is to explore the policy implications of these findings and to identify policy options to improve the practice of juvenile sentencing in Minnesota. First, the research findings are reviewed. Second, we consider whether the findings constitute problems in need of remediation. We assert that whether these findings are considered problematic is contingent on whether one abides by juvenile or adult criminal court standards of fairness in sentencing, realizing that public safety is an important consideration for both perspectives. Finally, we offer policy options designed to improve the use of the dispositional alternatives in Minnesota's juvenile courts.

5.2. A Review of the Findings

Geography: The results showed that geography (i.e., the Judicial District in which the case was disposed) influenced both the odds of motioning and of adult certification rather than an EJJ disposition. Person offenders from Districts Four (Hennepin County) and Nine were much more likely to be motioned than person offenders from any other district, property offenders from

District Nine were much more likely to be motioned than property offenders from any other district, and drug offenders from Hennepin were much more likely to be motioned than drug offenders from any other district. Further, cases disposed in District 5 were much more likely to be adult certified or to be motioned-disposed juvenile than to receive an EJJ disposition, than cases in any other district. In other words, there was almost no chance of a juvenile offender receiving an EJJ disposition in District 5.

Race: The study results are difficult to decipher with regards to race. While race/ethnicity affects both the probability of motioning and the selection of dispositional alternatives, the particular racial/ethnic groups affecting these two steps differ. In order to untangle this web, the major findings and our interpretations are discussed below by race or ethnicity.

- Hispanics: Being Hispanic had no significant effect on the decision to motion. Once motioned, however, being Hispanic increased the odds of receiving an EJJ as opposed to a juvenile disposition and had no affect on the decision to certify. In other words, Hispanics seem to be considered good candidates for the increased level of control that usually accompanies an EJJ disposition, but not at the level that is presumed with adult certification.
- Native American: Being Native American significantly diminished a juvenile's probability of being motioned — all other things held equal. The few motioned Native Americans were just as likely to receive one dispositional alternative as another. It would appear that a concerted effort is being made to retain Native Americans in the traditional juvenile justice system as conventional juvenile offenders.
- Asian American: Being Asian increased the odds of being motioned and adult certified, all other things held equal. Asians are a very small percentage of the population of

Minnesota, but a significant number of South-East Asians immigrated to Minnesota following the Vietnam War. Both Minneapolis and St. Paul have significant communities of Hmong and Vietnamese, in particular. The Hmong community, a culturally mountainous, tribal people have had an especially difficult adjustment to urban life in Minnesota. Traditional authority structures within Hmong families have been challenged by urban life, as evidenced by the involvement of their children in gangs. While Asians comprise only 5.1% of convicted gang members, there are 1,300 Hmong suspected or convicted gang members as opposed to 94 Vietnamese in the database managed by the Minnesota Gang Strike Force. Trying to understand the results of our study, members of our advisory committee suggested that being Asian American might consequently be an indirect measure of gang affiliation, explaining, in part, the propensity to both motion and adult certify Asian American juveniles. We did not have a reliable, direct measure of gang affiliation in the study.

- African American: The findings on African Americans are perhaps the most difficult to interpret of all the race/ethnicity data in the study. We found that African American juveniles were less likely to be motioned, but if motioned, were less likely to be given an EJJ disposition, and more likely to be given a juvenile disposition or an adult certification. Thus, African American juveniles do not seem to be considered good candidates for EJJ.

Our advisory committee had several interpretations of the findings. First, the increased probability of an adult certification over an EJJ disposition for motioned African American may indicate that “the system” is more likely to “give up” on African Americans juveniles as compared to juveniles of other races (except Asians).

Second, if one accepts that an EJJ disposition is perceived as the most punitive and onerous of the dispositional alternatives, the diminished likelihood of an EJJ disposition for African American juveniles may reflect leniency by the juvenile justice system toward this group. This interpretation is also consistent with the finding that African Americans are less likely to be motioned. It may be that decision makers, already acutely aware of minority disproportionate confinement, are reluctant to use the EJJ disposition with African American juveniles so as to not make a bad situation worse.

A third explanation presumes that the historical relationship between the African American community and the juvenile justice system affected their perception of the EJJ laws. When the EJJ legislation was being crafted, the African American community expressed concern that EJJ was just another vehicle for putting more African Americans into prison, thereby exacerbating Minnesota's already disproportionate African American incarceration rate.⁵⁸ A public survey of trust and confidence in the Minnesota courts showed that African Americans are more likely to distrust the system than other groups. It may be that the African American community is more likely to distrust the new EJJ disposition option than other groups, increasing the odds that they will plea to another sentencing option.

- Whites: Whites were more likely to be motioned than any other ethnic or racial group except Asian Americans. Once motioned, they were the least likely to be adult certified rather than to receive an EJJ disposition. Only African Americans were more likely to be motioned-disposed as juveniles than Whites. Thus, even though they were the most likely to be motioned, Whites were unlikely to be adult certified, being more likely to be

⁵⁸ Blacks in Minnesota are 13 times more likely than whites to be incarcerated per 100,000 population. Nationally, Blacks are 6 times more likely than whites to be incarcerated. April 2002, BJS Bulletin Prison and Jail Inmate at MidYear 2001. See Table 16.

EJJs or motioned-disposed as juveniles. In many ways, the probabilities of Whites receiving the various dispositional alternatives were the reverse mirror image of those received by African Americans.

Targeting of EJJ and Adult Certification: As we have just seen, unintended factors of race and geography influence the odds of adult certification rather than an EJJ disposition. From the perspective that adult certification and EJJ dispositions are targeting racial/ethnic groups and judicial districts differentially, they are not targeting as intended. In addition to these unintended effects, there are targeting problems with some of the intended factors because of their lack of (or relatively small) influence on the selection of dispositional alternatives. Number of charges (a culpability factor), use of a firearm, use of a weapon other than a firearm, whether there was victim injury, and type of offense (person, property, drug, or “other”) all failed to distinguish adult certifications from EJJs.

Another indicator of targeting problems and one of the most surprising findings of this study was that the probability of adult certification increased as the severity of the current offense decreased. Further, the probability of an adult certification was much lower than the probability of an EJJ disposition for the most serious offenses (including Murder 1 and 2). Collectively, our findings indicated a reversal of the intended targeting of EJJs and adult certifications such that EJJs are the “worst of the worst” while adult certifications are the “less bad of the worst”.

We offered three theories for these findings in Chapter Three. The first theory is that the juvenile court “system” views EJJ as a more punitive and onerous disposition than adult

certification.⁵⁹ This theory was first brought to our attention when we found several instances of juveniles pleading to the adult certification rather than the EJJ disposition. An EJJ disposition extends the age of juvenile court jurisdiction until age 21. Thus, a 16-year-old offender with an EJJ disposition can expect five years of juvenile court supervision, including (in many cases) at least one year of confinement. If this same offender was adult certified, he or she could reasonably expect to complete an adult sentence and thus remove his- or herself from court supervision in a much shorter period of time.

Secondly, the explanation of why serious offenders are more likely to receive EJJ dispositions than adult certification may result from the reluctance of judges to send juveniles charged with serious offenses to adult criminal court where they are at risk for incarceration in an adult facility for a relatively long period of time. There are persistent perceptions, supported by research, that juveniles face increased safety risks (assault, rape, and mental health problems) when incarcerated in an adult facility (see, e.g., Bishop and Frazier, 2000).

Thirdly to explain why minor offenders are more likely to be adult certified than to receive an EJJ disposition, we turn our attention to relatively older, minor offenders motioned for adult certification. The defense strategy for these offenders may take into consideration the probability of the offender's reoffending or being revoked for a technical violation (after disposition) when deciding how to plea. If the risk of recidivism is judged to be relatively high (often the case among property offenders),⁶⁰ an adult sentence may be relatively appealing since, with an EJJ disposition and a high likelihood of reoffending, the juvenile would likely serve at least part of the juvenile disposition as well as the stayed adult sentence upon revocation.

⁵⁹ We refer specifically to the juvenile court "system" comprised of the court, the prosecutor, and the defense, as the majority of dispositions for a motioned juvenile come about as a result of a plea negotiation (similar to adult sentences.)

⁶⁰ Property offenders are shown to reoffend at higher rates than other types of offenders as shown in a program evaluation report on Chronic Offenders, Office of the Legislative Auditor, State of Minnesota, February 2001.

5.3. Is There a Problem with the Use of Dispositional Alternatives in Minnesota?

The policy implications of the findings just reviewed are different depending on whether one takes the vantage point of the adult criminal justice system or the traditional juvenile justice system. Our findings established a lack of uniformity and consistency in the use of dispositional alternatives among the districts. By adult court standards, this poses a concern. Adult court sanctioning practices, particularly those of the Minnesota Sentencing Guidelines for adult felons, are predicated on the principles that fairness in sentencing requires predictability as to the type of sentence received, proportionality by offense type and criminal history (e.g., a murderer should receive a harsher sentence than a thief), and uniformity without regard to region or race.⁶¹

On the other hand, sentencing fairness in the juvenile court environment is defined very differently—the antithesis of the criteria for fairness in adult court. The juvenile court was designed under the premise that each juvenile is unique and therefore deserving of a unique disposition particular to that juvenile’s individual needs and circumstances (see, e.g., Krisberg and Austin, 1993). It was not until the emergence of the EJJ law that Minnesota Court Rules directed the judges to taken into account the “record of delinquency⁶²” as well as proportionality to the crime.⁶³

By traditional standards of juvenile court fairness, the influence of unintended factors on the selection of dispositional alternatives, especially as to geography, is not particularly troublesome. Differing community standards as to what constitutes a serious crime and the best methods for dealing with juvenile offenders may explain some of the regional differences and can still be consistent with the juvenile court standard of fairness.

⁶¹Minnesota Sentencing Guidelines and Commentary, Revised August 1, 2001, Section I. Statement of Purpose and Principles. This document can be found on the MSGC web site at: www.msgc.state.mn.us
<<http://www.msgc.state.mn.us>>

⁶²Minn. R. Juv. P. 15.05, subd. 2(B)(1)(a)(iii)

⁶³Minn. R. Juv. P. 15.05, subd. 2(B)(1)(b)

EJJ dispositions straddle the line between adult and juvenile court, making the fairness question difficult to answer. What fairness criteria should be applied to EJJ: the predictability and uniformity of adult court sentencing or the individual, unique dispositions of the juvenile court?

It is clear that there were attempts to apply adult court standards of fairness to the EJJ law through a couple of different mechanisms. First, it was thought that using the presumptive criteria for adult certification to also target offenders for EJJ would promote adult standards of fairness when sentencing to this dispositional alternative. Podkopacz and Feld (2001) made the point that the presumptive criteria were expected to:

...provide a stronger and more consistent response to serious and violent juvenile offenders, give judges clearer guidelines within an individualized sentencing process, and improve the congruence between judicial waiver decisions and criminal court sentencing practices (p. 1005).

The rareness of adult certification and EJJ dispositions is at odds with what would be expected from the uniform and consistent application of the presumptive criteria for certification and EJJ. Of the approximately 10,000 juvenile felony cases filed in Minnesota District Court annually, about 24 percent meet the presumptive criteria. However, only about one percent is ever certified, and around three percent receive an EJJ disposition.

The strategy of using the “the presumptive commitment offenses in the adult Sentencing Guidelines to define serious juvenile offenders whom juvenile court judges presumptively should waive” (Podkopacz and Feld, 2001, p. 1005) is apparently not enough to ensure predictability and proportionality as to who receives an EJJ. Our data shows that the presumptive criteria, and the sentencing guidelines that accompany them, have not been enough to eliminate disparity as

to who is certified or receives an EJJ disposition — the presumptive criteria is just too broad and general.

Second, the Minnesota law that created EJJ sought to establish procedural fairness, similar to criminal court standards of procedural fairness. EJJs have the right to a jury trial and there must be a probable cause determination in the EJJ proceedings. (MN Statute 260B.130)

An argument can certainly be made that with the stayed adult sentence and threat to individual liberty that is part of each EJJ disposition, adult standards of sentencing fairness should be applied to EJJ dispositions. Yet, it appears that the juvenile court philosophy of unique dispositions for each juvenile was purposefully maintained in the EJJ legislation. Interestingly, while the juvenile court standard of fairness in sentencing was purposefully left in the design of EJJ, so were the adult court standards of procedural fairness, such as jury trials and determination of probable cause. In straddling the adult criminal court and juvenile court worlds, proponents might argue that EJJ rightly incorporates both adult court and juvenile court standards of fairness.

While the influence of geography may or may not be a concern, depending on whether one adopts the adult criminal or the juvenile court perspective of fairness in sentencing, the influence of race on the selection of dispositional alternatives is troubling for both perspectives. The Public Safety Criteria, while clearly based primarily on the seriousness of the current offense and prior offense history, still permits a great deal of discretion regarding which juveniles are adult certified and which receive an EJJ disposition. Summarizing a large body of research on the subject of juvenile court sentencing, Feld (1995a) makes the point that “. . . after controlling for present offense and prior record, individualized discretion is often synonymous

with racial discrimination” (p. 1088). The influence of race on the selection of dispositional alternatives is a problem that requires remediation.

From the perspective of sentencing fairness in the juvenile court, the failure of adult certification and EJJ to effectively target their intended offender populations is explainable by the need to fit juvenile dispositions to the unique characteristics of each juvenile offender. So for example, while offenders charged with murder were almost as likely to receive an EJJ disposition as to be adult certified, the former group was significantly younger than the latter group. Apparently, many of the offenders charged with murder are considered reasonable candidates for treatment within the juvenile justice system because of their younger age.

However, public safety has always been a consideration in the sentencing of juveniles, though it clearly receives more emphasis in the contemporary than the traditional juvenile court. It is troubling from the public safety perspective that factors such as use of a firearm, use of a weapon other than a firearm, whether there was victim injury, and type of offense (person, property, drug, or “other”) all failed to distinguish adult certifications from EJJ. Our concern is compounded by the findings that the most serious offenders are more likely to receive an EJJ disposition than to be adult certified while the reverse is true for the least serious offenders. Consequently, our findings regarding the reversal of intended targeting such that EJJ are the “worst of the worst” while adult certifications are the “less bad of the worst” could be a cause for concern from a public safety perspective.

Concerns about public safety might be assuaged if further study shows EJJ sentencing to result in greater control over the juvenile. One of our least understood but most provocative findings is that juveniles disposed EJJ appear to reoffend significantly less than juveniles disposed as adults or given a traditional juvenile disposition. These recidivism results are,

however, extremely preliminary (the findings may prove to be the result of measurement issues rather than real differences in behavior), and additional study will be required to solve the public safety puzzle. However, EJJ dispositions may ultimately prove to exert greater incapacitation and provide for longer periods of supervision than an adult sentence, resulting in lower recidivism rates.

In summary, whether one regards the influence of geography on the selection of dispositional alternatives as a problem depends on whether one adopts the fairness standards of the juvenile or the adult criminal court. Regardless of perspective, however, the influence of race on the selection process is a problem that requires remediation. It is less clear whether the failure of the EJJ and adult certification dispositional alternatives to effectively target their intended offender populations is inconsistent with the promotion of public safety—further research is needed to determine this. But at the very least, the findings in this study suggest that greater clarification is needed as to the kinds of juvenile offenders that should be targeted for adult certification, as opposed to the blended EJJ disposition. In the next section, we examine options available to policymakers that might address these issues.

5.3. Policy Options

Our premises for identifying policy options are that the juvenile court is an invaluable asset for administering justice to juvenile offenders and that the EJJ disposition, in theory, is a useful addition to a juvenile court judge's dispositional menu. However, eight years have passed since the 1994 Juvenile Crime Act was implemented and our data suggest that it might be timely to reconsider whether the current configuration of the triad of dispositional alternatives is serving the best interests of juveniles, the juvenile justice system, and public safety. In particular, we suggest that greater clarification as to what kinds of juvenile offenders should be intended for

adult certification as opposed to the blended EJJ sentence may help lessen the geographic and racial influences on these disposition alternatives.

We recommend that a forum be provided for legislators, juvenile justice system personnel, and the general public to debate whether our major research findings constitute problems for juvenile sentencing in Minnesota.

While divergent views on this subject are to be expected, the debate would be healthy and will hopefully provide direction for future reform of Minnesota's juvenile justice system.

If the consensus of our proposed forum participants is that

- (1) geographic and racial variation in the use of the dispositional alternatives and/or
- (2) the failure of the adult certification and the EJJ disposition to effectively target their intended offender populations

are problems, what policies might be undertaken to ameliorate them? We recommend consideration of the following policy options. The options vary significantly with regards to the time and resources that would be required for their implementation:

- **Policy Option One:** *Conduct education programs for juvenile justice system personnel about the major findings of this research.*
- **Policy Option Two:** *Continued research on the causes of racial and regional variation in the use of the dispositional alternatives and the failure of adult certification and EJJ to effectively target their intended offender populations.*

- **Policy Option Three:** *Development of systematic procedures to monitor (1) the influence of race and judicial district on the selection of dispositional alternatives and (2) whether adult certification and EJJ are targeting their intended offender populations.*
- **Policy Option Four:** *Adopt strategies to discourage pleas to adult certification by minor offenders.*
- **Policy Option Five:** *Develop means to better distinguish offenders appropriate for adult certification from those appropriate for EJJ.*
- **Policy Option Six:** *Adoption of voluntary or mandatory dispositional guidelines.*

We briefly describe these policy options next:

Policy Option One: *Conduct education programs for juvenile justice system personnel about the major findings of this research.* The goal here would be to sensitize and train critical actors (e.g., county attorneys, probation officers, and judges) about racial and regional disparities as well as the targeting problems found in the use of the dispositional alternatives. As Pope (1995) points out, such training programs have proven successful in other criminal justice applications (e.g., sentencing institutes). One objective of these programs would be the discussion and promulgation of “best practices,” with more specifics beyond the very general presumptive designation criteria⁶⁴ with regard to who should be disposed EJJ. Best practices might do much to decrease disparities identified in the study and help diminish the likelihood that similarly situated juveniles end up with very different dispositions after being motioned.

Policy Option Two: *Continued research on the causes of racial and regional variation in the use of the dispositional alternatives and the failure of adult certification and EJJ to effectively target their intended offender populations.* NCSC and MSC are currently seeking funding from

⁶⁴ Presumptive designation criteria requires the juvenile to be 16 or 17 years old at the time of the offense and to have been charged with a presumptive commit offense under the adult MSG or charged with any felony with a firearm (MN Statute 260B.130).

the Office of Juvenile Justice and Delinquency Prevention to continue research on the use of dispositional alternatives in Minnesota. The objectives of the proposed research are:

- To better understand the factors that distinguish EJJ and Adult Certified Offenders. We would hope to discover why EJJ tends to be the dispositional alternative of choice for serious offenders (more so than adult certification) by interviewing judges, prosecutors, and public defenders.
- To determine whether public safety is compromised when presumptive commitment offenders are retained in the juvenile system. Additional disposition information will be collected to allow us to determine whether EJJ dispositions offer greater controls over the juvenile (e.g. through longer incapacitation and supervision)
- To evaluate whether an EJJ disposition deters recidivism, controlling for other factors known to influence recidivism (e.g., age). The question of recidivism looms large given the public safety issues raised by our research.
- To develop and apply a model to compare the costs and benefits of blended sentencing.

Policy Option Three: *Development of systematic procedures to monitor (1) the influence of race and judicial district on the selection of dispositional alternatives and (2) whether adult certification and EJJ are targeting their intended offender populations.* A statewide system for reporting characteristics of every motioned case from filing through disposition (or adult sentence in the case of adult certifications) needs to be implemented. The data collected by this system needs to be compiled into a single database that would be used to regularly generate reports addressing the issues of racial and regional biases as well as targeting of the dispositional alternatives. To this end, the Minnesota judiciary has recently undertaken a system-wide program to collect self-reported race data on all juveniles and adults in the criminal justice system.

Policy Option Four: *Adopt strategies to discourage pleas to adult certification by minor offenders.* First, sharing information with decision makers about the current targeting problems

with the dispositional alternatives and preliminary recidivism differences might incline them not to accept pleas to relatively short adult sentences. Judges, prosecutors, and defense attorneys need this information to help ensure that the most effective dispositional resource is chosen. Best practices might also be developed to support this education. Second, rules of court governing plea practice might be modified so that it is not possible to negotiate the adult sentence at the same time the adult certification plea is accepted in juvenile court. This would increase the uncertainty associated with the plea to adult certification, raising the risk to the juvenile of such a plea and as a result possibly decreasing the willingness of a juvenile to enter into such a plea. While such a delineation between the juvenile court plea to certification and the subsequent adult sentence may be possible to describe in rule, it may prove to be ineffectual in practice in very small jurisdictions.⁶⁵

Policy Option Five: *Develop means to better distinguish offenders appropriate for adult certification from those appropriate for EJJ.* If it is determined that greater clarity is needed when defining offenders most appropriate for an EJJ or adult certification, several policy options might be considered. One of the most obvious is to change the presumptive designation criteria to more specifically delineate the EJJ and adult certification dispositional alternatives. Currently, with the exception of direct filing to adult court for first degree murder, the presumption designation criteria are virtually identical.

Another means to delineate the adult certification and EJJ offenders is to make available a risk assessment tool at disposition. Risk assessment has proven to be a useful tool for differentiating the highest risk offenders from lower risk offenders in diverse applications such

⁶⁵ Only a minority of counties in Minnesota will have courts large enough to have a different judge pronounce sentence in adult court than adult certify the case. More often, the judge accepting the adult certification in juvenile proceedings will be the same judge presiding over the adult case and imposing the adult sanction. As a result, when the court accepts the plea for adult certification it is highly likely that the adult sentence is negotiated at the same time.

as release decisions, prediction of dangerousness, and selective incapacitation (Farrington and Tarling, 1985). For example, Virginia uses a risk assessment instrument to assist judges at the time of sentencing with decisions about which low-level offenders will be sent to prison and which to community corrections programs (Ostrom, Kleiman, Cheesman, Hanson, and Kauder, 2002). While the recommended placement is not binding on the sentencing judge, judges generally feel that the instrument is useful and not taxing of the court's resources. However, it should be noted that to adopt a risk assessment tool in juvenile court would introduce additional distinctions between juvenile court and adult court, as adult court in Minnesota employs sentencing guidelines based on severity of the current offense and criminal history.

Policy Option Six: *Adoption of voluntary or mandatory dispositional guidelines.* Sentencing guidelines have proven effective in reducing unintended biases and promoting consistency and proportionality in sentencing (Ostrom, Kauder, Rottman, and Peterson, 1998). The 1994 Task Force considered and rejected the concept of dispositional guidelines for the juvenile court (Feld, 1995a). Our data suggest that this option should at least be reconsidered, especially if one subscribes to the adult court definition of fairness in EJJ sentencing and also takes into account the threat to liberty inherent in adult sentences. Guidelines might be developed just for EJJ or certification dispositions. Development of such guidelines could force definition of the target groups of serious offenders and increase clarity regarding effective sentencing of this group. Development of juvenile guidelines for felony offenders is also consistent with how adults are sentenced in Minnesota. Minnesota has had guidelines for adult felony offenders since 1980.

Appendix A: Weights Applied to Observations

A.1. Weights for the Motioning Analysis

Observations must be weighted appropriately so that our sample is representative of the initial processing that occurred among all cases disposed in 1997 and 1998. Without case weighting, we would be unable to generalize our results beyond our sample, when our clear intention is to generalize to all juveniles processed in juvenile court in Minnesota.

Our objective is to weight the observations of both the “motioned” offenders (including motioned EJJ, direct file EJJ, and motioned for adult certification) and the conventional juveniles in our sample so that they are equal in number to the total number of motioned offenders and conventional juveniles, respectively, among all cases disposed during 1997 and 1998. Two steps are required to develop the weights. First, we must estimate the number of cases that were motioned and the number given conventional juvenile dispositions among all cases disposed during 1997 and 1998, since aggregate numbers are not available. Secondly, the case weight for these two major processing categories is derived by dividing the (estimated) total number of cases disposed by the number of cases in our sample for each category. Data used to calculate the weights came from a combination of aggregate annual data and data collected by the project (see Table A-1). The procedures used to estimate the total number of cases disposed in each major processing category is described next.

Table A-1

Data Used for Weighting

<u>Variable</u>	<u>Source of Data</u>	<u>Year</u>	
		1997	1998
Number of Juvenile Cases Disposed	Aggregate Annual	8,742	9,140
Number of EJJ's Disposed	Aggregate Annual	220	276
Number of Adult Certifications	Aggregate Annual	110	99
% Disposed EJJ Cases initially motioned EJJ	Sample	73%	50%
% Disposed EJJ Cases initially Direct Files	Sample	10.5%	18%
% Disposed EJJ Cases initially motioned for adult certification	Sample	16.5%	32%
% motioned-disposed juveniles initially motioned EJJ	Sample	73%	73%
% motioned-disposed juveniles initially direct files	Sample	3%	3%
% motioned-disposed juveniles initially motioned for certification	Sample	24%	24%

To estimate the number of cases that were motioned and the number given conventional juvenile dispositions among the total number of cases disposed during 1997 and 1998, we will apply appropriate sample statistics (because aggregate statistics are not available) to aggregate numbers of cases disposed. The aggregate numbers of cases in Table A-1 are broken down by how they were disposed (i.e, their dispositional alternative): conventional juvenile, EJJ, or adult certified. On the other hand, the sample proportions in Table A-1 are broken down by both dispositional alternative and by initial processing category⁶⁶ (e.g., “disposed EJJ initially motioned EJJ”). Multiplying the aggregate number of cases in the each dispositional alternative for each year by the appropriate sample proportions (one for motioned EJJ's and one for motioned-disposed juveniles for each year) and then summing the results will provide a breakdown of the number of cases in each dispositional alternative by their initial processing

⁶⁶The four initial processing categories were motioned EJJ, direct-filed EJJ, motioned for adult certification, or conventional juvenile.

category. To get the total number of cases in each initial processing category, we simply sum across the dispositional alternatives.

As we just discussed, the structure of the sample data dictated that we estimate the number of cases in each of four initial processing categories separately. However, the analysis in Chapter Two aggregates three of the initial processing categories (motioned EJJ, direct-filed EJJ, and motioned for adult certification) into a single major processing category, “motioned.” Consequently, after we estimate the number of cases in each initial processing category, we will sum them to estimate the number of motioned cases. The first step in this process is to estimate the number of conventional juveniles and “motioned-disposed” juveniles as described in the following.

Included among the 17,882 cases disposed of as conventional juveniles during 1997 and 1998 were an unknown number of cases initially either motioned for EJJ, motioned for adult certification, or direct filed for EJJ (henceforth “motioned-disposed juveniles”). These were obviously cases where the motions or direct file were rejected by the court. We need to know the size of this group in order to calculate case weights, as will be made clear below. Data on the number of these cases is not compiled so they will need to be estimated.

To estimate this number, we made an assumption. . . . we assumed that the ratio of (1) the number of motioned-disposed juvenile cases in our sample to (2) the number of cases disposed as EJJ or adult certifications observed in our sample also held among all cases disposed in 1997 and 1998. The sample data that showed 226 cases were disposed as EJJ or adult certifications (171 cases disposed as EJJ and 55 as adult certifications) and 37 were motioned-disposed juveniles. Thus, we estimated that the ratio of the number of motioned-

disposed juvenile cases to the number of cases disposed as EJJ or adult certifications among all cases disposed during 1997 and 1998 to be equal to 37/226.

The data in Table A-1 show that a total of 705 cases were either disposed of as EJJ or adult certified during 1997 and 1998. After applying the sample ratio (37/226) and doing a little algebra, we estimate that there were a total of 115 motioned-disposed juvenile cases among all cases disposed as juveniles in 1997 and 1998. We subtract this number from the total number of juvenile cases disposed to yield the number of juveniles processed exclusively as conventional juveniles, 17,767. We next estimate the number of cases that were motioned for EJJ and then the number motioned for adult certification.

Table A-1 shows that 220 juveniles in 1997 and 276 in 1998 received EJJ dispositions. Our sample data indicate that 73 percent and 50 percent of the cases receiving EJJ dispositions in 1997 and 1998, respectively, had been initially motioned for EJJ. Applying the sample percentages to the total number of juveniles that received EJJ dispositions each year, we estimate that $[(.73) * (220) + (.50) * (276)]$ or 299 of the juveniles who ended up with EJJ dispositions had been initially motioned for EJJ.

We also know that the 115 motioned-disposed cases had previously either been motioned for EJJ, direct filed for EJJ, or adult certified. To estimate the number that were originally motioned for EJJ, we use sample data showing that 73 percent (see Table A-1) of the motioned-disposed juvenile cases had been originally motioned for EJJ. Thus, we estimate that the number of the juvenile cases that had been initially motioned for EJJ among the motioned-disposed juvenile cases to equal $(.73)(115)$ or 84. Given this estimate and our estimate of the number of juveniles initially motioned for EJJ who ended up with EJJ dispositions (299), we estimate the total number of cases that were motioned EJJ in 1997 and 1998 to be $299 + 84$ or 383.

Identical procedures were used to estimate the number of juveniles who were initially direct filed, realizing that this group also ultimately received either EJJ or juvenile dispositions. We estimate that $[(.105) * (220) + (.18) * (276)]$ or 73 of the juveniles who ended up with EJJ dispositions initially had been direct files. Also, we estimate that $(.03)*(115)$ or 3 of the motioned-disposed cases were originally direct files. Consequently, we estimate the total number of cases that were initially direct filed in 1997 and 1998 to be $73 + 3$ or 76.

Similar procedures were used to estimate the number of juveniles who were initially motioned for adult certification, though realizing that this group ultimately could receive one of three possible dispositions: EJJ, juvenile, or adult certification. We know that 209 juveniles were certified as adults. From among the juveniles who received EJJ dispositions, we estimate that $[(.165) (220) + (.32)*(276)]$ or 124 were originally motioned for certification. We estimate that $(.24) (115)$ or 28 of the motioned-disposed juveniles were originally motioned for certification. Consequently, we estimate the total number of cases that were motioned for certification in 1997 and 1998 to be $209 + 124 + 28$ or 361.

Having estimated the total number of cases disposed in each initial processing category, we can now proceed with the calculation of the case weights. The weight for each category is derived by dividing the number of cases in our sample in that category into the number among all cases disposed in that category. As we mentioned, the analysis in Chapter Two collapses three of the initial processing categories (motioned for EJJ, direct files, and motioned for adult certification) into a single category, “motioned,” and it is for this category that we will calculate a case weight.

We first estimate that there were a total of 820 motioned-disposed juvenile cases in 1997 and 1998 (383 motioned for EJJ, 76 direct files, and 361 motioned for adult certification). Since

263 cases in our sample were motioned-disposed juvenile or direct filed (84 motioned EJJ, 53 direct files, and 126 motioned for adult certification), the correct weight for cases motioned or direct filed is then equal to $820/263$ or about three. Since our sample contains 293 juveniles processed exclusively as juveniles, the correct weight for juvenile cases is $17,767/293$ or about 61.

A.2. Weights for Analysis of Dispositional Alternatives

It was also necessary to weight observations for our analysis of selection criteria for dispositional alternatives (EJJ, adult certification, and motioned-disposed Juveniles⁶⁷). Specifically, we had to develop weights so that the pattern of dispositional alternatives observed in our sample reflected the distribution observed in the cases disposed during 1997 and 1998.

For juveniles with EJJ and adult certification dispositions, the calculations were straightforward, based on easily accessible aggregate statistics that recorded the actual number of juveniles given these dispositional alternatives during 1997 and 1998. Data compiled by the Research and Evaluation Unit of the State Court Administrator's Office of the Minnesota Supreme Court revealed that 496 cases were disposed EJJ and 209 cases were disposed as adult certifications during 1997 and 1998. Our sample contained 171 and 55 cases disposed as EJJs and adult certifications, respectively. Consequently, each EJJ observation was given a weight of $496/171$ or three (since weights were rounded to the nearest integer) while each adult certification case was given a weight of $209/55$ or four.

To calculate a weight for the motioned-disposed cases, we use the estimate from the preceding section of this appendix of 115 juvenile cases receiving juvenile dispositions after having first been motioned for EJJ or adult certification or direct filed. Since our sample

⁶⁷ Juveniles motioned for EJJ, direct filed, or motioned for adult certification who ended up with a conventional juvenile disposition.

contained 37 motioned cases that received juvenile dispositions, the appropriate weight for motioned-disposed juvenile cases was $115/37$ or approximately three.

Appendix B: Estimating the Motioning Model

B.1. Estimating the Model

The parameters of the conceptual model presented in Chapter Two can be estimated using logistic regression, a regression technique appropriate for predicting the probability of binary outcomes. The basic model that we are testing is as follows:

$$\begin{aligned} \Pr (M_i = I) = & b_0 + b_1(\textit{African American})_i + b_2(\textit{Native American})_i + b_3(\textit{Hispanic})_i + \\ & b_4(\textit{Asian American})_i + b_5(\textit{Gender})_i + b_6 (\textit{Age})_i + b_7 (\textit{Lives with Parents})_i + \\ & b_8(\textit{Prior Felony})_i + b_9(\textit{Prior Placement})_i + b_{10}(\textit{Offense Seriousness Score})_i + \\ & b_{11}(\textit{Number of Charges})_i + b_{12}(\textit{Adult Codefendant})_i + b_{13}(\textit{Firearm})_i + b_{14}(\textit{Other} \\ & \textit{Weapon})_i + b_{15}(\textit{Victim Injury})_i + b_{16}(\textit{District Four Drug Offense})_i + b_{17}(\textit{District} \\ & \textit{Four Other Offense})_i + b_{18}(\textit{District Four Person Offense})_i + b_{19}(\textit{District Four} \\ & \textit{Property Offense})_i + b_{20}(\textit{District Nine Drug Offense})_i + b_{21}(\textit{District Nine Other} \\ & \textit{Offense})_i + b_{22}(\textit{District Nine Person Offense})_i + b_{23}(\textit{District Nine Property} \\ & \textit{Offense})_i + b_{24}(\textit{All Other Districts Drug Offense})_i + b_{25}(\textit{All Other Districts Other} \\ & \textit{Offense})_i + b_{26}(\textit{All Other Districts Person Offense})_i + b_{27}(\textit{Detention})_i + \\ & b_{28}(\textit{Supervised})_i \end{aligned}$$

Where $\Pr (M_i = I)$ is the probability that juvenile offender i is motioned or direct filed.

The first step in the analysis was to apply weights to each observation so as to reflect the actual prevalence of motioning in the population of juvenile cases disposed in 1997 and 1998 (See Appendix A for an explanation of the weighting scheme). Once the observations were weighted, it was clear that the distribution of values for our dependent variable (the probability of being motioned or direct filed) was severely skewed . . . of the 18,662 cases in our weighted sample, only 820 were motioned or direct filed. With a highly skewed dependent variable,

logistic regression is no longer appropriate (Nagler, 1994). Instead, another procedure, maximum likelihood skewed logit estimation or *scobit*, will be used (Nagler, 1994).

The actual estimation process will be undertaken utilizing the *scobit* command in STATA. Unless otherwise stated, we use robust estimation with M = 0 (conventional juvenile processing) as the baseline category.

Table B-1 shows the estimates for the parameters of the logistic regression equation in the following:

Table B-1: Logistic Regression Estimates				
	Motioning or Direct File			
		Robust		
Variable	Coef.	Std. Err.	z	P>z
African American	-1.03	0.16	-6.54	0.00
Native American	-0.44	0.17	-2.54	0.01
Hispanic	-0.21	0.19	-1.1	0.27
Asian American	0.68	0.18	3.87	0.00
Gender	-0.31	0.20	-1.53	0.13
Age	0.79	0.05	15.32	0.00
Lives with Parents	-0.45	0.16	-2.83	0.01
Prior Felony	0.03	0.11	0.25	0.80
Prior Placement	0.50	0.12	4.04	0.00
Offense Seriousness Score	0.00	0.00	-2.96	0.00
Number of Charges	0.66	0.11	6.23	0.00
Adult Codefendant	0.82	0.15	5.56	0.00
Firearm	1.31	0.12	10.61	0.00
Other Weapon	-0.36	0.15	-2.44	0.02
Victim Injury	0.96	0.15	6.6	0.00
District Four Drug Offense	1.91	0.29	6.66	0.00
District Four Other Offense	0.27	0.35	0.78	0.44
District Four Person Offense	1.96	0.22	8.95	0.00
District Four Property Offense	1.33	0.25	5.38	0.00
District Nine Drug Offense	0.13	0.61	0.21	0.83
District Nine Other Offense	0.55	0.61	0.91	0.37
District Nine Person Offense	2.14	0.24	8.79	0.00
District Nine Property Offense	2.17	0.27	7.95	0.00
All Other Districts Drug Offense	0.68	0.32	2.12	0.03

Table B-1: Logistic Regression Estimates				
	Motioning or Direct File			
		Robust		
Variable	Coef.	Std. Err.	z	P>z
All Other Districts Other Offense	0.45	0.32	1.4	0.16
All Other Districts Person Offense	0.46	0.19	2.46	0.01
Detention	1.31	0.10	12.7	0.00
Supervised	-0.08	0.11	-0.74	0.46
Constant	-32.14	1.12	-28.61	0.00

B.2. The Estimated Probabilities

Another way to look at the estimated model is to see how the model generates the predicted probability of being motioned or direct filed. After our sample of 548 juvenile offenders was weighted appropriately, the average probability of being motioned or direct filed was found to be .042 with a standard deviation of .08. Importantly, the model generated individual probabilities of being motioned or direct filed ranging from a minimum of .00007 to a maximum of .999995. The ability of the model to generate individual probabilities over .5 suggests that the variables contained in the model are able to discriminate between those juvenile offenders who will be motioned or direct filed and those will be treated exclusively as juvenile cases.

To get a better idea of how well the model does in predicting motioning or direct filing, we associated each juvenile offender with the outcome that had the highest probability on the basis of the estimated model. If the predicted probability was .5 or higher, the juvenile was classified as having been motioned or direct filed. If the predicted probability was less than .5, the offender was classified as a juvenile. These predictions are associated with the actual outcomes in Table B-2.

Table B-2: Comparison of Actual to Predicted Classifications

Actual	Motioned or Direct File		Predicted		Total	
	N	%	N	%	N	%
Motioned or Direct File	540	68.4%	249	31.6%	789	100.0%
Juvenile	3,172	17.7%	14,701	82.3%	17,873	100.0%
Total	3,712	19.9%	14,950	80.1%	18,662	100.0%

Model Correct 15241 % Correct (Model) 82%

Null Correct 17873 % Correct (Null) 96%

The results in Table B-2 indicate that the model was capable of making predictions into both outcomes. Further, the highest percentage of cases in each row (excepting, of course, the total column) corresponds to a correct prediction. Overall, the model is unable to predict more accurately than the null, which is not surprising given the low frequency of occurrence of motioning and direct files. However, the model was able to accurately classify more than 68 percent of the juveniles who were either motioned direct filed. These results provide strong confirmatory evidence that the model is capable of explaining the “variation” in the probability of motioning or direct file.

Taken together, these results provide encouragement that the model performs well. We next turn to an examination of the substantive implications of the results generated by the model.

B.3. Interpretation

The estimated coefficients presented in Table B-1 measure the change in the log of the probability of a juvenile offender being motioned or direct filed relative to the probability of being processed entirely in the juvenile justice system. The following section contains information that will be used in Chapter Two to provide a discussion of the factors that influence

the probability that a juvenile offender will be motioned (or direct filed) or processed as a juvenile.

In order to interpret logistic regression models, it is necessary to interpret probabilities and their changes from some baseline. In the present case, we make use of a baseline model wherein all variables are held at their mean value. From this baseline, the discussion in this section will rely on the following sets of tables and figures:

- **Table B-3:** Presents the odds ratios contrasting the probability of being motioned or direct filed relative to being processed as a conventional juvenile. The first column presents the odds ratios. When the odds ratio is greater than 1.00, it provides information on the degree to which a one unit change in the variable in question increases the odds of being motioned or direct filed. When the odds ratio is less than 1.00, the odds are in favor of the base category, conventional juvenile processing. In order to facilitate interpretation of the latter odds ratios, the second column of Table B-3 expresses $1/\text{odds}$ for all instances in which the original odds ratio is less than 1.00.
- **Table B-4:** Presents the discrete changes in probabilities over the entire range of each of the variables.
- **Table B-5:** The table presents the actual probability of being motioned or direct filed for selected values of the interval and ordinal-scale variables, age and offense seriousness, respectively.

The tables described above will be presented next.

Table B-3: Odds Ratios

<u>Variable</u>	<u>Odds Ratio</u>	<u>Inverse Odds Ratio</u>
African American		2.79
Native American		1.55
Hispanic		1.23
Asian American	1.97	
Gender		1.36
Age	2.20	
Lives with Parents		1.57
Prior Felony	1.03	
Prior Placement	1.64	
Number of Charges	1.94	
Adult Codefendant	2.27	
Firearm	3.70	
Other Weapon		1.43
Victim Injury	2.61	
District Four Drug Offense	6.73	
District Four Other Offense	1.31	
District Four Person Offense	7.07	
District Four Property Offense	3.78	
District Nine Drug Offense	1.14	
District Nine Other Offense	1.74	
District Nine Person Offense	8.49	
District Nine Property Offense	8.78	
All Other Districts Drug Offense	1.98	
All Other Districts Other Offense	1.56	
All Other Districts Person Offense	1.59	
Detention	3.70	
Supervised		1.09

Table B-4: Discrete Change in Probability

<i>Variable</i>	<i>0-->1</i>
African American	-0.009
Native American	-0.004
Hispanic	-0.002

Table B-4: Discrete Change in Probability

<i>Variable</i>	<i>0-->1</i>
Asian American	0.011
Gender	-0.003
Lives with Parents	-0.005
Prior Felony	0.000
Prior Placement	0.007
Number of Charges	0.008
Adult Codefendant	0.014
Firearm	0.028
Other Weapon	-0.004
Victim Injury	0.015
District Four Drug Offense	0.062
District Four Other Offense	0.004
District Four Person Offense	0.061
District Four Property Offense	0.029
District Nine Drug Offense	0.002
District Nine Other Offense	0.009
District Nine Person Offense	0.080
District Nine Property Offense	0.079
All Other Districts Drug Offense	0.011
All Other Districts Other Offense	0.006
All Other Districts Person Offense	0.006
Detention	0.023
Supervised	-0.001

Table B-5: Probability of Being Motioned or Direct Filed

<u>Variable</u>	<u>Value of Variable</u>	<u>Probability M=1</u>
	410000 (Min.)	0.001
Offense Seriousness Score	155953 (Mean)	0.014
	101000 (Max.)	0.023
	14	0.002
	15	0.005
Age	16	0.011
	17	0.025
	18	0.054

B.4. Relative Contribution of Statistically Significant Factors to Probability of Being Motioned or Direct Filed

Table B-1 provides the value of the *z-score*, used to determine whether a particular factor made a statistically significant contribution to the estimation of the probability of being motioned or direct filed. The size of the *z-scores* for these factors (regardless of their direction, positive or negative) can also be used to rank the relative contribution of these factors to the probability estimate in an “average” sense.⁶⁸ Table B-6 lists the significant independent variables from the regression, ranked in descending order by the size of their *z-scores*. It can be seen that the *z-score* for *Age* was much larger than any of the others. *Detention* (pre-dispositional out-of-home placement) had the next highest score, followed closely by whether the current offense involved a firearm. Next, by size of *z-score*, were several of the offense and district interactions. Victim injury, adult codefendant, and whether the juvenile was an African American also had relatively large *z-scores*.

Table B-6
Significant Independent Variables
Ranked by Absolute Value of Z-score

<u>Variable</u>	<u>AbsZ</u>
Age	15.32
Detention	12.7
Firearm	10.61
District Four Person Offense	8.95
District Nine Person Offense	8.79
District Nine Property Offense	7.95
District Four Drug Offense	6.66
Victim Injury	6.6
African American	6.54
Number of Charges	6.23
Adult Codefendant	5.56

⁶⁸ Remember that in a logistic regression, the relative contribution of an independent variable to the estimation of the probability of being motioned or direct filed will vary as the values of the other independent variables in the regression change.

Table B-6
Significant Independent Variables
Ranked by Absolute Value of Z-score

<u>Variable</u>	<u>AbsZ</u>
District Four Property Offense	5.38
Prior Placement	4.04
Asian American	3.87
Offense Seriousness Score	2.96
Lives with Parents	2.83
Native American	2.54
All Other Districts Person Offense	2.46
Other Weapon	2.44
All Other Districts Drug Offense	2.12

Appendix C: Estimating the Dispositional Alternative Model

C.1. Estimating the Model

The parameters of the conceptual model presented in Chapter Three can be estimated using the multinomial logit model (MNL). This model is identical to estimating simultaneously binary logits for all possible comparisons among the dispositional alternatives. The probability is a non-linear function of the independent variables. The basic model that we are testing is as follows:

$$\begin{aligned} \Pr(D_i = k) = & b_0 + b_1(\text{African American})_i + b_2(\text{Native American})_i + b_3(\text{Hispanic})_i + \\ & b_4(\text{Asian American})_i + b_5(\text{Gender})_i + b_6(\text{Age})_i + b_7(\text{Lives with Parents})_i + \\ & b_8(\text{Prior Felony})_i + b_9(\text{Prior Placement})_i + b_{10}(\text{Offense Seriousness Score})_i + \\ & b_{11}(\text{Number of Charges})_i + b_{12}(\text{Adult Codefendant})_i + b_{13}(\text{Firearm})_i + b_{14}(\text{Other} \\ & \text{Weapon})_i + b_{15}(\text{Victim Injury})_i + b_{16}(\text{Drug Offense})_i + b_{17}(\text{Other Offense})_i + \\ & b_{18}(\text{Person Offense})_i + b_{19}(\text{District Five Offense})_i + b_{20}(\text{Detention})_i + \\ & b_{21}(\text{Supervised})_i + b_{22}(\text{Lambda}^{69})_i \end{aligned}$$

Where D_i is the categorical variable representing the choice of dispositional alternative by the juvenile court judge for juvenile offender i . These outcomes are assumed to be mutually exclusive and exhaustive.

⁶⁹ Lambda is based on the probability of motioning. To estimate Lambda, we adopt an approach developed by Lee (1983) for the case when sample selection is based on the multinomial logit model, to the case when it is based on the logit model. The following procedure is used:

1. Estimate the logit model. For those cases that were motioned, obtain the predicted probability that the case is in the motioned category (P_j). Using this value, we make the following computations:

$$H_j = \Phi^{-1}(P_j).$$

$$\lambda_j = \phi(H_j) / \Phi(H_j)$$

2. Estimate β_k and $\beta_\lambda = \rho\sigma_\epsilon$ by least squares regression of y on X and the estimate of λ .

The first step in the analysis was to apply weights to each observation so as to reflect the actual distribution of distributional alternatives in the population of juvenile cases disposed in 1997 and 1998. Appendix A provides an explanation of the weighting scheme.

Having established that multinomial logit is the appropriate technique for estimation, the actual estimation process will be undertaken utilizing the *mlogit* command in STATA. Unless otherwise stated, we use robust estimation with $D = 1$ (EJJ) as the baseline category. Of critical importance to the viability of the estimations is that the IIA assumption holds.

The assumption of IIA and hence the applicability of multinomial logit can be tested by utilizing the Hausman test (Hausman and McFadden, 1984). This procedure tests the null hypothesis that the odds (outcome j versus k) are independent of other alternatives. If the Hausman test for IIA is not met, multinomial logit is not the appropriate technique for estimation.

The estimates for the basic model are contained in Table C-1 that follows:

Table C-1: Multinomial Logit Estimates									
Adult Certification					Juvenile				
Variable	Coef.	Robust Std. Err.	z	P>z	Variable	Coef.	Robust Std. Err.	z	P>z
African American	1.64	0.28	5.80	0.00	African American	1.14	0.37	3.11	0.00
Native American	0.53	0.34	1.54	0.13	Native American	-0.07	0.54	-0.12	0.90
Hispanic	0.72	0.45	1.58	0.11	Hispanic	-1.01	0.51	-2.00	0.05
Asian American	0.76	0.37	2.07	0.04	Asian American	-0.29	0.63	-0.46	0.65
Gender	-0.19	0.59	-0.33	0.74	Gender	0.97	0.39	2.51	0.01
Age	0.50	0.14	3.59	0.00	Age	-0.96	0.19	-5.18	0.00
Lives with Parents	-0.73	0.45	-1.60	0.11	Lives with Parents	0.38	0.29	1.29	0.20
Prior Felony	1.65	0.25	6.50	0.00	Prior Felony	-0.35	0.34	-1.02	0.31
Prior Placement	-1.66	0.26	-6.40	0.00	Prior Placement	1.04	0.38	2.75	0.01
Offense Seriousness Score	0.00	0.00	4.57	0.00	Offense Seriousness Score	0.00	0.00	3.95	0.00
Number of Charges	-0.04	0.21	-0.19	0.85	Number of Charges	0.05	0.25	0.21	0.83
Adult Codefendant	0.61	0.30	2.06	0.04	Adult Codefendant	0.10	0.36	0.29	0.78
Firearm	0.41	0.36	1.14	0.26	Firearm	-0.88	0.44	-1.99	0.05
Other Weapon	-0.18	0.27	-0.67	0.50	Other Weapon	0.72	0.35	2.04	0.04

Table C-1: Multinomial Logit Estimates									
Adult Certification					Juvenile				
Variable	Coef.	Robust Std. Err.	z	P>z	Variable	Coef.	Robust Std. Err.	z	P>z
Victim Injury	0.36	0.29	1.22	0.22	Victim Injury	-0.01	0.34	-0.04	0.97
Drug Offense	-0.29	0.49	-0.60	0.55	Drug Offense	1.94	0.58	3.34	0.00
Other Offense	-0.38	0.59	-0.65	0.52	Other Offense	1.53	0.71	2.15	0.03
Person Offense	-0.13	0.34	-0.38	0.70	Person Offense	0.54	0.65	0.83	0.41
District Five Offense	2.35	0.42	5.63	0.00	District Five Offense	2.41	0.58	4.16	0.00
Detention	0.13	0.26	0.51	0.61	Detention	-1.36	0.44	-3.10	0.00
Supervised	-0.68	0.22	-3.12	0.00	Supervised	-0.63	0.30	-2.08	0.04
Lambda	3.11	3.79	0.82	0.41	Lambda	10.91	5.70	1.91	0.06
Constant	-12.50	2.39	-5.22	0.00	Constant	10.62	2.92	3.64	0.00

In order to ensure that MNLM is appropriate for this estimation problem, the Hausman test (Hausman and McFadden 1984)⁷⁰ was applied to test for violations of the IIA assumption. This procedure tests the null hypothesis that the odds (outcome j versus outcome k) are independent of other alternatives. If the Hausman test for IIA is not met, multinomial logit is an inappropriate technique for estimation.

The results from the Hausman test are shown in Table C-2. As can be seen, the results uniformly indicate that the null hypothesis cannot be rejected. We conclude that changing the elements of the choice set of dispositional alternatives has no influence on the dispositional alternative selected by juvenile judges and that multinomial logit is an appropriate technique for estimation.

Table C-2: The Hausman Test of Irrelevant Alternatives				
<u>Outcome Omitted</u>	<u>chi2</u>	<u>df</u>	<u>P>chi2</u>	<u>Evidence</u>
Adult Certification	4.556	22	1	for Ho
Juveniles	-7.717	22	---	for Ho

Null: Odds(Outcome-J vs. Outcome-K) are independent of other alternatives.

⁷⁰ We used the mlogtest command presented in Stata Technical Bulletin STB-58 (November 2000). The authors of the technical bulletin are Freese and Long. Hereafter we refer to the bulletin as Freese and Long (2000).

Results from the Hausman test warrant additional procedures to assist with the interpretation of the estimated model. Long (1997) suggests two additional tests when using MNLM. The first is a test to determine whether categories of the dependent variable (dispositional alternative) can be combined. The second is to see whether the effect of each independent variable is zero across all categories of the dependent variable.

To test whether outcome categories (i.e., dispositional alternatives) could be combined, a series of Wald tests were conducted. These tested the null hypothesis that all coefficients (except intercepts) associated with a given pair of outcomes are zero. Failure to reject the null indicates that the outcome categories should be combined. Table C-3 shows the results of these tests. As can be seen, the null hypothesis can be rejected for every combination of outcomes, and we conclude that all three of the categories of the dependent variable are meaningful and that none should be combined.

Table C-3: Wald Tests for Combining Outcome Categories

<u>Categories Tested</u>	<u>chi2</u>	<u>df</u>	<u>P>chi2</u>
Adult Cert - Juvenile	152.1	22	0
Adult Cert - EJJ	179.69	22	0
Juvenile - EJJ	111.995	22	0

Null: All coefficients except intercepts associated with given pair of outcomes are 0 (i.e., categories can be collapsed).

We conclude, therefore, that all of the three dispositional alternatives are independent of one another. This provides support for the basic notion that juvenile judges, with input from county attorneys and defense lawyers, consider three distinct types of dispositions at the time of disposition.

We next conducted a series of Wald tests to test the null hypothesis that all coefficients associated with an independent variable are simultaneously equal to zero. If we fail to reject the null hypothesis, consideration should be given to eliminating the variable from the analysis. The results of these tests are shown in Table C-4. As can be seen, the Wald tests for independent variables reveal that the null hypothesis, that all coefficients associated with given variables are zero, can be rejected for 12 of the 22 independent variables. We conclude that the significant variables have an effect on the predicted sentencing outcome.

By comparing the results of Tables C-1 and C-4, we note that some of the variables that are not significant in the latter table are predictive of dispositions in the former table, which merits their further investigation. However, six variables are not significant in either table (Lives with Parents, Lambda, Native American, Victim Injury, Person Offense, and Number of Charges) and are consequently not related to the selection of dispositional alternatives.

Table C-4: Wald Tests for Independent Variables

<u>Variable</u>	<u>chi2</u>	<u>df</u>	<u>P>chi2</u>
Prior Placement	51.574	2	0
Age	47.83	2	0
Prior Felony	44.746	2	0
African American	38.636	2	0
District Five Offense	34.856	2	0
Offense Seriousness Score	22.212	2	0
Supervised	13.052	2	0.001
Drug Offense	12.406	2	0.002
Detention	10.771	2	0.005
Hispanic	7.883	2	0.019
Gender	7.65	2	0.022
Firearm	6.548	2	0.038
Other Weapon	5.339	2	0.069
Other Offense	5.299	2	0.071
Lives with Parents	5.138	2	0.077
Asian American	4.61	2	0.1
Adult Codefendant	4.35	2	0.114

Table C-4: Wald Tests for Independent Variables

<u>Variable</u>	<u>chi2</u>	<u>df</u>	<u>P>chi2</u>
Lambda	3.856	2	0.145
Native American	2.519	2	0.284
Victim Injury	1.622	2	0.444
Person Offense	1.004	2	0.605
Number of Charges	0.101	2	0.951

Null: All coefficients associated with given variable(s) are 0.

An examination of Table C-4 (note that variables in this table are ordered in descending rank of the Wald chi-square statistic) reveals that there is considerable variation in the magnitude of the chi-square statistics for this series of Wald Tests. The Wald statistic tests the null hypothesis that for a given variable all of the coefficients in both equations are zero. While this test does not allow one to infer the direction of the effect, it allows one to assess the relative importance of the regressors.

As can be seen, number of prior out-of-home placements is the most significant variable in the model with a chi-square in excess of 50. Note that of the top five variables, two are prior history variables (*Prior Placement* and *Prior Felony*), two were sociodemographic (*Age* and *African American*), and one was a process variable (*District Five*). Current offense-related variables then enter the picture, since the *Offense Seriousness Score* had the sixth highest chi-square. The categories of factors influencing the selection of dispositional alternatives can be roughly ordered by significance as follows: (1) prior history, (2) sociodemographic, (3) process, and (4) current offense-related. Note how this contrasts with the factors related to the motioning decision that were dominated to a much greater extent by current offense-related factors.

Having determined that the basic assumptions underlying the model are supported and having investigated whether the variables have a statistically significant impact on the selection

of dispositional alternatives, we turn briefly to an assessment of the overall fit of the model. The overall χ^2 for the change in the log likelihood function is 292 with 820 degrees of freedom. The pseudo R^2 is .24. Each of these is reasonable in the confines of a large cross sectional analysis. On the basis of our preliminary assessment, the model appears to do a very good job of accounting for the variation in the types of dispositional alternatives received by those in our sample.

To get a better idea of how well the model does in predicting specific sentencing outcomes, we associate each case with the dispositional alternative that had the highest probability on the basis of the estimated model. Note that this does not mean that the predicted probabilities are above (.50) – each case is simply assigned to the outcome with the highest probability. These predictions are associated with the actual dispositional outcomes in Table C-5.

Table C-5: Comparison of Actual to Predicted Classifications

<u>Actual</u>	<u>Predicted</u>			
	EJJ	Adult Cert	Juvenile	Total
EJJ	N 426	48	15	489
	% 87.12	9.82	3.07	100.0
Adult Cert	N 112	104	4	220
	% 50.91	47.27	1.82	100.0
Juvenile	N 66	9	36	111
	% 59.46	8.11	32.43	100.0
Total	N 604	161	55	820
	% 73.66	19.63	6.71	100.0
Model Correct	566		% Correct (Model)	69%
Null Correct	489		% Correct (Null)	60%
			% Improvement	15%

The results in Table C-5 indicate that the model was capable of making predictions into all three outcomes. We also note that the model is able to accurately predict 566 cases or 69 percent (566/820), which represents an improvement over the null of 60 percent (489/820).⁷¹ These results suggest that the model is capturing a great deal of the “variation” in dispositional outcomes.

Looking closely at the results in Table C-5, we note that of the 489 actual EJJ dispositions, the model correctly predicts 426 (87 percent). We also find that 104 of the 220 cases that actually resulted in adult certification are correctly predicted (47 percent). Of the cases that actually received a juvenile disposition, the model predicts 36 of 111 (33%) correctly. We recognize that the model does not do as good a job predicting “motioned-disposed juveniles,” which are, after all, exceptions to the more frequent EJJ and adult certification dispositions. All in all, we find the performance of the model to be quite satisfactory. Consequently, we next seek to more fully understand the implications contained in the estimated model.

C.2. The Estimated Probabilities

Another way to look at the estimated model is to see how the model generates predicted probabilities of an observation being in each of the dispositional alternatives. Table C-6 presents the results from the estimated model. As can be seen, the model generates probabilities in excess of .50 for all three dispositional alternatives. Consequently, the model is capable of placing over one half of the predicted probability in all three of the possible categories. This suggests that the

⁷¹ The null model is assumed to be the one in which we predict every case into the category with the largest number of cases. In this case it is the EJJ category.

variables contained in the model are able to discriminate among the various dispositional alternatives.

Table C-6

Estimated Probabilities by Disposition Category

<u>Variable</u>	<u>N</u>	<u>Mean</u>	<u>Std. Dev.</u>	<u>Min</u>	<u>Max</u>
Pr (D=EJJ)	820	0.59634	0.22917	0.01955	0.94841
Pr (D=Adult Cert)	820	0.26829	0.23593	0.00162	0.96284
Pr (D=Juvenile)	820	0.13537	0.15775	0.00191	0.9343

Table C-6 also presents the mean value of the probability for each of the predicted alternatives. For example, the mean probability of receiving an EJJ disposition is (.6), the mean value of adult certification is (.27), and the mean value of a juvenile disposition is (.14).

C.3. Interpreting the Results

The estimated coefficients presented in Table C-1 measure the change in the log of the probability of an adult certification disposition or a juvenile disposition relative to the probability of an EJJ disposition among motioned juveniles. Unlike single equation regression models, the estimated coefficients of multinomial logit analyses are difficult to interpret in any meaningful way. Cheng and Long (June, 2000) have developed *Xpost – An Excel Workbook For The Post-Estimation Interpretation Of Regression Models With Categorical Variables*.⁷² The workbook provides a number of calculations and graphical summaries that provide enormous assistance in the interpretation of MNLM results. Long (1997, 164) suggests that by utilizing odds ratios, discrete and partial changes, predicted probabilities, and graphical summaries, all available by using the workbook, “it is possible to readily interpret the many parameters of the

⁷²The workbook and documentation is available at: <http://www.indiana.edu/~jsl650/xpost.htm>.

multinomial logit model.” We will use this valuable tool to assist with the interpretation of our results in the following.

The sections that follow provide results that form the basis of the discussion in Chapter Three of the ways various factors influence the probability of dispositional alternatives. In order to interpret the probabilities in MNLM models, it is necessary to discuss probabilities and their changes from some baseline. In the sections that follow – unless otherwise stated – we make use of the following baseline model: all variables held at their mean value. Using this basic model we have two additional ways (odds ratios and discrete change in probabilities) to look at the probability of ending up in each of the dispositional alternatives.

Table C-7 presents the odds ratios for all possible contrasts. The top panel presents the odds ratios for ten pair-wise comparisons. When the odds ratio is greater than 1.00, it provides information on the degree to which a one unit change in the variable in question increases the odds of the non-base dispositional alternative. For example, African American juveniles are 5.16 times more likely to be adult certified than they are to receive an EJJ disposition. When the odds ratio is less than 1.00, the odds are in favor of the base category. For example, for offenders who use a firearm, the odds ratio for a juvenile disposition when compared to an EJJ disposition is .414, not shown in the table. This suggests that these offenders are 2.4 times ($1/.414$) more likely to receive an EJJ disposition than a juvenile disposition.

Table C-8 presents the discrete changes in probabilities over the entire range of each of the variables. For example, offenders who use a firearm increase their probability of being adult certified by .088 but decrease their probability of receiving an EJJ or a juvenile disposition by .017 and .071, respectively. Table C-9 provides actual probabilities of receiving the

dispositional alternatives for selected values of the interval and ordinal scale variables included in the analysis, *Age* and *Offense Seriousness Score*, respectively.

To facilitate the discussion of results in Chapter Three, the tables described above will be presented next.

Table C-7: Odds Ratios for All Possible Contrasts

<u>Variable</u>	<u>Type of Change</u>	Base= EJJ		Base= Adult Cert.			
		Adult Cert.	Juvenile	Adult Cert.	Juvenile		
		<u>Odds Ratio</u>	<u>Inverse Odds Ratio</u>	<u>Odds Ratio</u>	<u>Inverse Odds Ratio</u>		
African American	Unit	5.156		3.138		1.643	
Native American	Unit	1.698			1.069		1.815
Hispanic	Unit	2.045			2.754		5.630
Asian American	Unit	2.146			1.333		2.861
Gender	Unit		1.213	2.633		3.194	
Age	Unit	1.643			2.623		4.310
Lives with Parents	Unit		2.066	1.456		3.008	
Prior Felony	Unit	5.184			1.413		7.326
Prior Placement	Unit		5.264	2.817		14.828	
Offense Serious Score	Std. Dev.	1.711		1.798		1.052	
Number of Charges	Unit		1.042	1.055		1.099	
Adult Codefendant	Unit	1.839		1.110			1.657
Firearm	Unit	1.512			2.413		3.649
Other Weapon	Unit		1.203	2.052		2.468	
Victim Injury	Unit	1.430			1.014		1.449
Drug Offense	Unit		1.336	6.936		9.269	
Other Offense	Unit		1.468	4.603		6.755	
Person Offense	Unit		1.139	1.711		1.950	
District Five Offense	Unit	10.500		11.168		1.064	
Detention	Unit	1.140			3.886		4.430
Supervised	Unit		1.965		1.873	1.049	
Lambda	Std. Dev.	1.150		1.634		1.420	

Table C-8: Discrete Change in Probability of Disposition Category by Change in Independent Variable

<u>Independent Variable</u>	<u>Type of Change in Independent Variable</u>	<u>Change in Probability</u>		
		<u>EJJ</u>	<u>Adult Cert</u>	<u>Juvenile</u>
African American	0-->1	-0.338	0.276	0.062
Native American	0-->1	-0.082	0.099	-0.017
Hispanic	0-->1	-0.084	0.156	-0.072
Asian American	0-->1	-0.116	0.154	-0.038
Gender	0-->1	-0.074	-0.054	0.128
Age	One year	-0.002	0.100	-0.097
Lives with Parents	0-->1	0.054	-0.106	0.052
Prior Felony	0-->1	-0.200	0.263	-0.063
Prior Placement	0-->1	0.136	-0.269	0.133
Offense Seriousness Score	Std. Dev.	-0.116	0.075	0.041
Number of Charges	1-->2	0.003	-0.008	0.005
Adult Codefendant	0-->1	-0.103	0.108	-0.005
Firearm	0-->1	-0.017	0.088	-0.071
Other Weapon	0-->1	-0.033	-0.045	0.078
Victim Injury	0-->1	-0.050	0.059	-0.008
Drug Offense	0-->1	-0.220	-0.102	0.323
Other Offense	0-->1	-0.144	-0.096	0.240
Person Offense	0-->1	-0.015	-0.032	0.046
District Five Offense	0-->1	-0.528	0.346	0.182
Detention	0-->1	0.077	0.049	-0.126
Supervised	0-->1	0.135	-0.094	-0.041
Lambda	Std. Dev.	-0.054	0.013	0.041

Table C-9: Probability of Disposition Category by Offense Seriousness Score and Age

<u>Variable</u>	<u>Value of Variable</u>	<u>Probability of Disposition Category</u>		
		<u>EJJ</u>	<u>Adult Cert</u>	<u>Juvenile</u>
Offense Seriousness Score	101000 (Murder 1)	0.793	0.142	0.065
	120000 (Crim. Vehicular Homicide)	0.744	0.174	0.082
	133000 (Assault 2)	0.707	0.198	0.095
	156000 (Theft \$501-\$2,500)	0.634	0.245	0.121
	189000 (Crimes Against Adm Justice-F)	0.518	0.318	0.164
	217000 (Assault 5-GM)	0.417	0.379	0.203

Table C-9: Probability of Disposition Category by Offense Seriousness Score and Age

<u>Variable</u>	<u>Value of Variable</u>	Probability of Disposition Category		
		<u>EJJ</u>	<u>Adult Cert</u>	<u>Juvenile</u>
	236000 (Theft \$201-\$501-GM)	0.352	0.418	0.230
	243000 (Forgery/Counterfeiting-GM)	0.330	0.431	0.239
	333000 (Theft<\$200 M)	0.118	0.543	0.339
	410000 (Vehicle Theft related-UK)	0.042	0.567	0.391
Age	14	0.310	0.022	0.668
	15	0.516	0.061	0.423
	16	0.663	0.129	0.208
	17	0.695	0.222	0.083
	18	0.637	0.334	0.029

References

- Advisory Task Force on the Juvenile Justice System. (1994). *Final Report, 5-11*. St. Paul, Minnesota: Minnesota Supreme Court.
- Barnes, C., and Franz, R. (1989). Questionably Adult: Determinants and Effects of the Juvenile Waiver Decision. *Justice Quarterly*, 6:117-35.
- Bishop, D. and Frazier, C. (1991). Transfer of Juveniles to Criminal Court: A Case Study and Analysis of Prosecutorial Waiver. *Notre Dame Journal of Law, Ethics, and Public Policy*. 5:281-302.
- Bishop, D., Frazier C., Lanza-Kaduce L., and Winner, L. (1996). The Transfer of Juveniles to Criminal Court: Does it Make a Difference. *Crime and Delinquency*, 41:171-191.
- Bishop, D., and Frazier, C. (2000). Consequences of Transfer. In J. Fagan and F. Zimring (Eds.), *The Changing Borders of Juvenile Justice*. Chicago, IL: The University of Chicago Press.
- Champion, D. and Mays, G. (1991). *Transferring Juveniles to Criminal Courts: Trends and Implications for Criminal Justice*. New York: Praeger.
- Cox, S. and Conrad, J. (1996). *Juvenile Justice: A Guide to Practice and Theory*. Chicago: Brown and Benchmark.
- Farrington, D. and Tarling, R. (1985). Criminological Prediction: An Introduction. In D. P. Farrington and R. Tarling (Eds.), *Prediction in Criminology* (pp 2-33). Albany, New York: State University of New York Press.
- Feld, B. (1995a). Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform. *Minnesota Law Review*, 79:965-1128.
- Feld, B. (1995b). The Social Context of Juvenile Justice Administration. In K. Kempf-Leonard, C.E. Pope, and W.H. Feyerherm, (Eds.), *Minorities in Juvenile Justice*. Thousand Oaks, California: Sage Publications.
- Gottfredson, M., and Gottfredson, D. (1988). *Decision Making in Criminal Justice: Toward the Rational Exercise of Discretion*. New York: Plenum Press.
- Hausman, J. and McFadden, D. (1984). Specification tests for the Multinomial Logit Model. *Econometrica*, 52:1219-1240.
- Krisberg, B. and Austin, J. (1993). *Reinventing Juvenile Justice*. Newbury Park, CA: Sage Publications.
- Lee, L. (1983). Generalized Econometric Models with Selectivity. *Econometrica*, 51:507-512.

- Long, J. (1997). *Regression Models for Categorical and Limited Dependent Variables*. Thousand Oaks, CA: Sage Publications.
- McCarthy, B. and Smith, B. (1996). The Conceptualization of Discrimination in the Juvenile Justice Process: The Impact of Administrative Factors and Screening Decisions on Juvenile Court Dispositions. *Criminology*, 24:41-64.
- McNulty, E. 1996. The Transfer of Juveniles to Adult Court: Panacea or Problem. *Law and Policy*, 18:61-75.
- Nagler, J. (1994). Scobit: An Alternative Estimator to Logit and Probit. *American Journal of Political Science*, 38:230-255.
- Ostrom, B., Kauder, N., Rottman, D., and Peterson, M. (1998). *Sentencing Digest: Examining Current Sentencing Issues and Policies*. Williamsburg, Virginia: National Center for State Courts.
- Ostrom, B., Kleiman, M., Cheesman, F., Hansen, R., and Kauder, N. (2002). *Offender Risk Assessment in Virginia: A Three-Stage Evaluation*. Manuscript in preparation.
- Podkopacz, M. and Feld, B. (1996). The End of the Line: An Empirical Study of Judicial Waiver. *The Journal of Criminal Law and Criminology*, 86: 449-492.
- Podkopacz, M. and Feld, B. (2001). The Back-Door to Prison: Waiver Reform, "Blended Sentencing," and the Law of Unintended Consequences. *The Journal of Criminal Law and Criminology*, 91: 997-1072.
- Polk, K. (1984). Juvenile Diversion: A Look at the Record. *Crime and Delinquency*, 30: 648-659.
- Pope, C. (1995). Directions for the Future. In K. Kempf-Leonard, C.E. Pope, and W.H. Feyerherm, (Eds.), *Minorities in Juvenile Justice*. Thousand Oaks, California: Sage Publications.
- Poulos, T. and Orchowsky, S. (1994). Serious Juvenile Offenders: Predicting the Probability of Transfer to Criminal Court. *Crime and Delinquency*, 40: 3-17.
- Rankin, J. (1983). The Family Context of Delinquency. *Social Forces*, 35: 466-479.
- Santelmann, K. and Lillesand, K. (1999). Extended Jurisdiction Juvenile in Minnesota: A Prosecutor's Perspective. *William Mitchell Law Review*, 25: 1303-1337.
- Sickmund, M., Snyder, H., Poe-Yamagata, E. (1997). *Juvenile Offenders and Victims: 1997 Update on Violence*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

Snyder, H. and Sickmund, M. (1999). *Juvenile Offenders and Victims: 1999 National Report*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

Torbet, P., Griffin P., Hurst, H., and MacKenzie, L. (2000). *Juveniles Facing Criminal Sanctions: Three States That Changed the Rules*. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention.