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

## **An Evaluation Executive Summary**

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## Executive Summary



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### 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. EJJs 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 EJJs. In short, adult certification cases were to be the “worst of the worst” while EJJs 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 EJJs 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 EJJs 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 EJJs 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 EJJs 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 EJJ<sup>1</sup> or adult certification or “direct file” for EJJ<sup>2</sup> (henceforth referred to as “motioning”).<sup>3</sup> The small fraction of juvenile offenders selected for motioning (“motioned juveniles”) form the pool from which EJJs 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.<sup>4</sup> 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 non-presumptive offenders, the county attorney can “remove” the certification motion.<sup>5</sup> 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.
- *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 placement<sup>6</sup> 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).

- 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 Certifications<sup>7</sup>**

**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 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. 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.

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, EJJs 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, EJJs 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.<sup>8</sup>

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

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.*



<sup>1</sup> 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.

<sup>2</sup> 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.  
2.

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.

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.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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).

<sup>7</sup> 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.

<sup>8</sup> We 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.