STATE OF MINNESOTA

IN SUPREME COURT

C6-89-2248

MINNESOTA SUPREME COURT

CRIMINAL COURTS STUDY COMMISSION

FINAL REPORT

DECEMBER 28, 1990

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Acknowledgments

The Minnesota Supreme Court Criminal Courts Study Commission (CCSC) would like to thank each person who contributed to the work of the CCSC and to the debate and discussion necessary to produce this report. In particular, the CCSC gratefully acknowledges the participation of the public hearing witnesses whose names are listed in the appendix to this report, and the assistance of the court administration staff in each of the hearing locations.

The CCSC thanks Wayne Kobbervig, Director of Research and Statistics, State Court Administration, for providing insightful statistical analysis. The CCSC also acknowledges the information and studies provided by the National Center for State Courts and the State Planning Agency, and the background information provided by Philip Marron, reporter for the Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure.

Professor Joseph Connors's editorial assistance was invaluable and indispensable. The CCSC wishes to acknowledge the dedicated work of its support staff, especially staff attorneys Michael B. Johnson and Julie A. Stenberg, whose time and assistance was generously provided by the Research and Planning Office of the Supreme Court. Finally, the Law Firm of Peterson, Bell, Converse and Jensen supported this project by providing me with the time and assistance necessary to complete this important endeavor.

Martin J. Costello
Chair, Minnesota Supreme Court
Criminal Courts Study Commission
December 28, 1990

Introduction

> It is true that great and inexcusable delay in the enforcement of our criminal law is one of the grave evils of our time. Continuances are frequently granted for unnecessarily long periods of time, and delays incident to the disposition of motions for new trial and hearings upon appeal have come in many cases to be a distinct reproach to the administration of justice. The prompt disposition of criminal cases is to be commended and encouraged. But in reaching that result a defendant, charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense. To do that is not to proceed promptly in the calm spirit of regulated justice but to go forward with the haste of the mob. *Powell v. Alabama*, 287 U.S. 45, 59, 53 S.Ct. 55, 60, 77 L.Ed. 158, 165 (1932) (Opinion by Justice Sutherland).

The Minnesota Supreme Court Criminal Courts Study Commission (CCSC) was established by the Supreme Court on December 29, 1989, in response to legislative and judicial concern over the timely disposition of criminal and juvenile cases. The CCSC was given a one-year time period to examine:

1. Whether systems, rules and statutes of other jurisdictions provide alternative models which would simplify procedures and expedite the processing of criminal cases without sacrificing fair outcome;
2. Whether certain kinds of minor offenses should be decriminalized and subjected to an administrative process, with the option of enhancing the matter to a misdemeanor if prior judgments have been entered against a party;
3. Whether the petty misdemeanor category should be expanded to replace current misdemeanor offenses in some instances, with

criteria for enhancing a petty misdemeanor to a misdemeanor in specified circumstances; and

4. Whether other administrative or legislative action can be taken to facilitate the expeditious disposition of criminal and juvenile cases without sacrifice of due process of law.

Twenty-five members were appointed upon creation of the CCSC, and within three months the membership was increased to thirty. The members included corrections and law enforcement personnel, trial and appellate court judges, a trial court administrator, a legislator, a law professor, county and municipal prosecutors, and public and private defense counsel. The prosecution and defense perspectives were balanced, and included experienced criminal, juvenile, and commitment law practitioners.

In addition to the input of its members, the CCSC obtained qualitative data from judges, lawyers, and other criminal justice system participants through seven public hearings held in various locations around the state. Case-processing information maintained by the Supreme Court's State Judicial Information System (SJIS) provided much of the quantitative data, along with several independent studies performed by experts in the field of case management. The CCSC's methodology is described in greater detail in the next section of this report.

The CCSC was pleased to confirm that, notwithstanding increasing criminal case loads, Minnesota state courts come very close to meeting the demanding case-processing time objectives established by the Minnesota State Legislature, Minnesota

Conference of Chief Judges, and the American Bar Association. Although the CCSC recognized a need for continued progress, the CCSC and witnesses who testified before it agreed that timing objectives should remain goals and not become rigid standards. For example, if cases move so fast that defendants and their attorneys are denied a fair opportunity to prepare, the entire criminal justice system falls into disrepute.

The CCSC also observed that the needs of the Minnesota criminal justice system varied throughout the state. Differences arise between full versus part time prosecutors and defenders, traveling versus resident judges, local versus distant probation offices, and local versus regional corrections facilities. Communities also differed as to whether to decriminalize or increase penalties for certain offenses, such as underage consumption of alcohol. Improvements in efficiency must, therefore, take these local diversities into account.

The most important observation made by the CCSC is that all elements of the criminal justice system experienced frustration due to inadequate funding for the system as a whole. All too often the popular reaction to rising crime is to enact more criminal prohibitions, or enhance the severity of existing ones, ignoring the need for adequate funding of prosecution, defense, probation, and corrections resources. Similarly, enhancing only one element of the system can be counter-productive. Simply increasing prosecution or judicial resources alone is ineffective; public defenders, for example, must be given the ability and time to

investigate cases and to develop a meaningful attorney-client relationship in order to be in a position to resolve cases. At the same time, an early guilty plea will not benefit the system if it takes eight to ten weeks for an overworked court services staff to prepare a presentence investigation report. Thus the CCSC sees as its most important responsibility the task of increasing public awareness and commitment to adequate and balanced funding of the Minnesota criminal justice system as a whole.

With these fiscal concerns in mind, the CCSC has made a number of recommendations designed to increase efficiency of criminal case processing without sacrificing due process of law. These improvements are listed in the Summary of Findings and Recommendations section of this report, and are discussed in Chapter 1.

The study of juvenile case processing produced similar results: a need exists to improve efficiency, but the need is not overwhelming. The CCSC found the primary cause of delay is that the uncertainty and unpredictability of case dispositions deters early settlement. The same broad range of juvenile case dispositions available for serious offenses exists for most minor offenses, notwithstanding that three-fourths of all juvenile offenses actually result in a much narrower range of dispositions. Moreover, current statutes and rules prohibit charge reduction and disposition recommendations. Recommendations aimed at encouraging early settlement of juvenile cases are listed in the Summary of Findings and Recommendations, and are discussed in Chapter 2.

The CCSC also addressed the subject of mental competency and commitment for two reasons: (1) these proceedings can delay the processing of a criminal case and (2) they can cause the loss of liberty resulting in confinement and forcible medication. Here the CCSC found that the procedural requirements are already tightly drawn, but that steps can be taken to achieve earlier resolution of competency and commitment issues and, more importantly, earlier treatment with necessary medications. The primary barrier to early resolution of mental commitment proceedings is the reluctance by the respondent to admit mental illness. This reluctance could be alleviated by reinstating the concept of a limited conditional commitment. At the post-commitment stage, procedures for earlier treatment with necessary medications are already in use in parts of Minnesota. Recommendations designed to encourage such procedures statewide are listed in the Summary of Findings and Recommendations section of this report, and are discussed in Chapter 3.

Overall, the CCSC heard many worthwhile suggestions regarding efficiency and due process in Minnesota's criminal justice system. The absence of discussion or recommendations on a particular topic should not imply disapproval by the CCSC. This report contains the CCSC's viewpoint on the areas the Legislature and the Supreme Court directed the CCSC to examine and the issues the CCSC found to be the most important at this time.

Methodology

The CCSC organized its work through a system of committees. The three substantive law areas - criminal, juvenile, and competency/commitment - were the focus of separate committees: Felony & Misdemeanor Prosecution & Defense, Juvenile Justice, and Mental Competency & Commitment. Cutting across the substantive law areas were the Law Enforcement and Corrections Committee and the Judicial Administration Committee. Finally, the Executive Committee provided directional support and assistance to the CCSC chair. A list of committee membership is appended to this report.

In addition to individual study and committee meetings, the full CCSC met ten times. The CCSC began by reviewing the case-management plans for each district, current case-processing statistics, recent amendments to the Rules of Criminal Procedure that impacted case processing, and available reports and literature addressing case processing and delay reduction. Study issues were identified and assigned to committees for review. The CCSC held seven public hearings - in St. Paul, Minneapolis, St. Cloud, Rochester, Marshall, Bemidji and Duluth - to gather information about the issues, and several CCSC members studied other jurisdictions while traveling at their own expense.

The CCSC was also aided by the efforts of the Minnesota Supreme Court Advisory Committee on the Rules of Criminal Procedure. The Advisory Committee meets regularly to advise the Supreme Court of the need for amendments to the Rules of Criminal

Procedure, and had already completed an extensive review of the procedures utilized by other jurisdictions during its consideration of the Uniform Rules of Criminal Procedure promulgated by the National Conference of Commissioners on Uniform State Laws. The Advisory Committee's efforts resulted in a number of changes to the Rules of Criminal Procedure that may reduce delay, and these changes are summarized in the Appendix.

The Advisory Committee also recently reconsidered and reinterpreted its position on an issue that was widely debated by the CCSC, namely the timing of the Omnibus Hearing. As indicated in Chapter 1, the CCSC supports the action of the Advisory Committee.

Finally, the committees of the CCSC submitted proposed findings and recommendations on their assigned study issues. These were debated, modified in part, and adopted by the full CCSC.

Summary of Findings and Recommendations

Chapter 1

Criminal Case Processing

Measuring Case-Processing Speed

Finding

1.1 While the productivity of the court system, and of the criminal justice system as a whole, can be most easily measured using time-related case-processing standards, the exclusive reliance on these standards does not necessarily lead to either the appearance or reality of true criminal justice.

Recommendation

1.1 Case-processing objectives should be goals, rather than standards, and only in circumstances of significant noncompliance should there be concern over the failure to meet case processing objectives.

Adequate and Balanced Funding of the System As a Whole

Findings

1.2A Funding of less than all of the related elements of the criminal justice system is not beneficial.

1.2B Current law does not routinely provide the legislature with the necessary financial impact information.

Recommendation

1.2 A criminal justice system financial impact statement should be required as a portion of the bill submission in any bill having direct or indirect impact on the criminal justice system.

Omnibus Hearings

Finding

1.3 The CCSC strongly supports the October 23, 1990, Report of the Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure as it relates to omnibus hearings.

Recommendation

1.3 That the Rules of Criminal Procedure be amended so as to adopt the October 23, 1990, Report of the Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure as it relates to omnibus hearings.*

Jury Selection

Finding

1.4 While it may be of use in certain isolated cases to adopt the modified voir dire process, such action should be taken on a case-by-case rather than uniform basis. In all cases, however, a well-reasoned, extensive juror questionnaire should be made available to the lawyers for their use in the voir dire process.

Recommendation

1.4 The Rules of Criminal Procedure should be amended to include a standard juror questionnaire form for use in criminal cases as a supplement to voir dire.

Certification of Petty Misdemeanors

Finding

1.5 Prosecutors should be given, in the rules and the relevant statutes, the option to certify misdemeanor offenses as petty misdemeanors, with the approval of the court. It would be clear that no conviction obtained after a certification to which the defendant has not agreed may be used for charging an enhanced offense at a later date, nor may any such conviction be used to disqualify a defendant in a later prosecution from receiving "first offender treatment" by way of continuance for dismissal, pretrial diversion, or expungement rights.

Recommendation

1.5 Prosecutors should be given, in the rules and in the relevant statutes, the option to certify misdemeanor

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*The Minnesota Supreme Court has already implemented this recommendation. *See* Order of the Supreme Court, Promulgation of Amendments to the Rules of Criminal Procedure, C1-84-2137, Nov. 29, 1990 (amendments effective January 1, 1991).

offenses as petty misdemeanors, with the approval of the court. It would be clear that no conviction obtained after a certification to which the defendant has not agreed may be used for charging an enhanced offense at a later date, nor may any such conviction be used to disqualify a defendant in a later prosecution from receiving "first offender treatment" by way of continuance for dismissal, pretrial diversion, or expungement rights.

Administrative Remedies; Forfeitures; Decriminalization

Traffic and Driver's License Offenses

Findings

1.6A The offense of driving without valid and collectible insurance should be made administrative rather than criminal, subjecting the offender to loss of driving privileges and registration certificates concomitant with the frequency and extent of such violation. Unpaid fines for petty misdemeanor traffic offenses should become a lien upon the motor vehicle in which the offense was committed, which would obviate the need for issuance of arrest warrants for such offenses.

1.6B Parking and minor traffic offenses take up a significant amount of court and law enforcement time, and law enforcement does not have sufficient resources to effectively execute arrest warrants. Reclassification of these violations as civil matters would relieve the court system and law enforcement and reduce delay.

Recommendations

1.6A Section 65B.67, subdivision 4, sentence 1, of the Minnesota Statutes should be repealed. The authority of the Department of Public Safety's Driver and Vehicle Services Division should be substituted to revoke the driver's license and registration privileges of a person found to have been driving without valid insurance, pursuant to an administratively determined schedule of suspension periods, for no less than 10 days. In addition, legislation should be enacted declaring unpaid fines for petty misdemeanor traffic offenses to be a lien upon the motor vehicle in which the offense was committed, rather than be a personal charge against the offender. Finally, the issuance of arrest warrants for unpaid fines should be abandoned.

1.6B Parking and non-moving traffic offenses should be reclassified as civil offenses with monetary sanctions as the primary penalty. The Department of Public Safety's Driver and Vehicle Services Division should be responsible for more severe sanctions including non-renewal of licenses and impoundment of plates.

Worthless-Check Offenses

Finding

1.7 Worthless-check offenses can place a tremendous strain on local prosecution efforts and the courts, but should be pursued when some evidence of criminal intent is present.

Recommendation

1.7 Section 609.535, subdivision 2, of the Minnesota Statutes should be repealed and worthless-check violations under section 609.52 of the Minnesota Statutes should have a jurisdictional minimum of $100, which minimum may be met by aggregation of offenses occurring in the same or different counties, and local ordinances establishing a lower jurisdictional minimum should be prohibited.

Application of Misdemeanor Rules to Gross Misdemeanors

Finding

1.8 Although application of the misdemeanor Rules of Criminal Procedure to gross misdemeanors might result in efficiencies, misdemeanor rules were not initially intended to apply to the then existing gross misdemeanors, and the felony rules currently applicable to gross misdemeanors preserve important procedural protections.

Recommendation

1.8 The Rules of Criminal Procedure applicable to all categories of misdemeanors should be reexamined.

Case Management

Findings

1.9A It is in the interest of efficient administration to reduce the number of missed appearances and bench warrants if the scheduled date and time for a next

hearing is established before a defendant leaves the courtroom at any appearance.

1.9B The traditional August 1 effective date for most criminal legislation is too early to permit implementation of new laws; an October 1 effective date would be more convenient.

Recommendations

1.9A The Chief Judges of all districts should establish a uniform policy within their districts of setting the next event date prior to the conclusion of any hearing.

1.9B The effective date of all criminal justice related legislation should be changed to October 1.

Plea Negotiations

Finding

1.10 Plea negotiations as to charge or sentence, or both, should be a matter of individual prosecutorial discretion and should best be left to negotiations between appropriate prosecuting authorities and the trial bench in the various jurisdictions. This requires that any local rules prohibiting the practice, or otherwise limiting plea bargaining, be prohibited.

Recommendation

1.10 The Rules of Criminal Procedure should be amended by adding a prohibition against local rules which would in any way prohibit or infringe upon the rights of the parties to engage in plea negotiations either as to charge or sentence, and of the court to approve or disapprove such bargains.

Criminal History Information

Findings

1.11A Courts and counsel need an accurate criminal history score at the earliest possible time after a defendant is charged to engage in meaningful negotiations and dispositions.

1.11B Incomplete criminal history scores, and the difficulty in reading BCA criminal history score reports, delay PSI reports. This delay could be alleviated if local jurisdictions reported criminal dispositions quickly and

accurately and the BCA in turn processed the information quickly and accurately and in an understandable format.

Recommendations

1.11A Procedures should be implemented to obtain an accurate criminal history score starting at the time of the arrest and charging of the defendant. Local jurisdictions should be directed and encouraged to quickly and accurately report criminal dispositions to the BCA, and the BCA in turn should be encouraged and directed to quickly and accurately process the information and produce it in an understandable format. Finally, the Sentencing Guidelines Commission should make readily available to all local jurisdictions previously developed guidelines worksheets. The CCSC recognizes that this kind of updating will require funding for computerization and common data retrieval systems, but that savings in earlier disposition of cases, less need for trial dates and attendant costs, as well as earlier sentencing, should more than offset those costs.

1.11B Sentencing worksheets should be prepared before a verdict or plea, whenever feasible.

Telephone Participation in Certain Criminal Matters

Finding

1.12 Traveling long distances to appear in brief, non-dispositive, uncontested, ministerial hearings is not beneficial to the system. The Rules of Criminal Procedure should expressly permit telephone conference calls in such cases, in the discretion of the court.

Recommendation

1.12 The Rules of Criminal Procedure should be amended to provide that in non-dispositive, uncontested, ministerial hearings, including Rule 8 and other hearings as agreed by counsel, the defendant may waive the right to be present and request participation by telephone. The Court may allow the participation of one or more parties, counsel or the Judge through the use of telephone conference calls of such proceedings in its discretion.

Chapter 2

Juvenile Court Proceedings

Case Processing

Finding

2.1 A need for processing juvenile offenders more efficiently exists, but the need is not overwhelming.

Recommendation

2.1 Case-processing time objectives proposed by the Conference of Chief Judges should be goals, rather than standards, and only in circumstances of significant noncompliance should there be concern over the failure to meet case-processing objectives

Certification of Petty Offenses

Findings

2.2A Predictability of outcomes and the expeditious handling of cases are crucial factors in juvenile justice, and both can be increased by reducing the range of dispositions available.

2.2B Reducing the range of dispositions can be accomplished without sacrificing the discretion necessary to address the best interests of the child by permitting certification of delinquency offenses as petty offenses.

Recommendations

2.2A The Minnesota Juvenile Court Act should be amended to add a section providing that an alleged delinquency offense shall be treated as a juvenile petty offense, if the county attorney believes that it is in the best interest of the child to do so and certifies that belief to the juvenile court at or before the arraignment or adjudicatory hearing upon the petition, and the court approves the certification motion.

2.2B Section 260.015, subdivision 21, of the Minnesota Statutes should be amended to add to the definition of juvenile petty offense a violation of state or local law which has been certified as a petty offense in accordance with the designated provisions of law.

2.2C Rule 19.05 of the Minnesota Rules of Juvenile Procedure should be amended to delete the provision providing that

no delinquency petition may be amended to a petty petition.

Settlement Negotiations

Finding

2.3 Rule 22.05 of the Minnesota Rules of Juvenile Procedure, which precludes disposition recommendations as part of settlement agreements, impedes the expeditious settlement of juvenile cases because that rule prevents any assurance to a juvenile defendant regarding the outcome of the case, and there does not appear to be any compelling reason to preclude such recommendations.

Recommendation

2.3 Rule 22.05 of the Minnesota Rules of Juvenile Procedure, which provides that settlement agreements shall not include recommendations as to disposition, should be abolished.

Use of Referees

Finding

2.4 The use of referees in less serious juvenile cases is an effective means of furthering the goal of judicial economy. In view of the limited sanctions provided for juvenile petty offenses, the right to object to the assignment of a referee is not necessary in those cases and should not be retained.

Recommendation

2.4 Rule 2.02 of the Minnesota Rules of Juvenile Procedure should be amended to eliminate the right of the child's counsel or the county attorney to object to a referee presiding at a hearing in proceedings concerning juvenile petty offenses.

Chapter 3

Mental Competency and Commitment

Conditional Continuance

Finding

3.1 Excessive litigation is caused by the lack of the long-term conditional continuance as a dispositional tool.

Recommendation

3.1 Section 253B.095 of the Minnesota Statutes should be amended so as to allow conditional continuances for up to one year, unless the court finds reason to dismiss the petition.

Jarvis Trials

Finding

3.2 Delay in providing effective treatment to committed persons as a result of failing to hold a *Jarvis* medications hearing at an early date often requires needless additional court hearings, not to mention needless additional suffering of the untreated committed person.

Recommendations

3.2 A The *Jarvis* determination should be made at the initial trial where the respondent has a treatment history involving major psychotropic medications.

1) Court-appointed examiners should inquire into all relevant *Jarvis* medication issues, including competency with regard to medication decisions, at the initial commitment proceedings.
2) A guardian ad litem should be appointed immediately in cases in which it appears that the proposed patient has a history of treatment with medications, in order to facilitate a *Jarvis* hearing at the time of the initial commitment order.
3) Additional funds should be appropriated to allow the county attorney and the prepetition screening program to prepare sufficient *Jarvis* information to allow the court to make an informed decision at the initial commitment hearing, if appropriate.

B Use of remote audio-video closed-circuit television equipment should be utilized to allow treating physicians to testify without having to travel to the court.

CHAPTER 1

CRIMINAL CASE PROCESSING

Measuring Case-Processing Speed

Case Timing Objectives. The Conference of Chief Judges, which is the administrative council for the trial courts in Minnesota, has been actively developing and implementing trial court case management plans and policies since 1984.[1] These efforts resulted in the use of "hit" lists identifying the oldest cases of each type, "under advisement" reports reminding judges of the statutory ninety-day decision limit, clearance rates measuring filings against dispositions, delay-reduction education, and implementation and monitoring of delay reduction programs in each district. In January 1989, the Conference adopted case-processing time objectives approved by the American Bar Association[2] for felony and

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[1]Conference of Chief Judges, in conjunction with the Research & Planning Office, Office of the State Court Administrator, *Minnesota Trial Courts Case Management Plans* 2 (Jan. 1, 1990) (hereinafter referred to as Case Management Plans). The Conference's members include the chief judge and assistant chief judge for each of the ten judicial districts.

[2]ABA Judicial Administration Division & National Conference of State Trial Judges, *Standards Relating to Court Delay and Reduction* § 2.52 (adopted August 1984). Similar standards were in existence prior to the ABA endorsement. Kansas was the first state to adopt similar standards (in 1980), and by 1984 40% of the states had adopted time standards and 90% had installed data systems to calculate age of cases and track case progress. Schwartz, *Delay in State Courts: Are Time Standards the Answer*, 70 Judicature 124-1126 (1986) (notes that the Kansas Supreme Court has admonished that justice, not speed, is the primary

gross misdemeanor cases. These timing objectives are set forth in Table 1.1, below.

TABLE 1.1

CONFERENCE OF CHIEF JUDGES CASE-PROCESSING TIMING OBJECTIVES

PERCENTAGE OF CASES DISPOSED

Within 4 months	Within 6 months	Within 12 months
90%	97%	99%

Shortly after adoption of these objectives by the Conference, the Legislature codified these standards as part of a three-pronged plan. Under the first prong, the ten judicial districts prepared and filed with the Legislature written case-management plans designed to "implement the goal of ensuring the right to speedy trial in criminal cases and the expeditious disposition of civil cases."[3] The second prong involved the establishment of the CCSC, including a minimum set of issues to examine and a January 1, 1991, report deadline,[4] while the third prong established a deadline of July 1, 1994, for compliance with the timing objectives.[5]

Available Data. For each case filed, the trial courts must report certain case-related activities to the Supreme Court's State

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concern of the courts).

[3]1989 Minn. Laws c. 335, art. 3, § 40. See footnote 1 and accompanying text.

[4]1989 Minn. Laws c. 335, art. 3, § 41. *See also* Order of the Supreme Court Establishing the Criminal Courts Study Commission and Appointing Members, C6-89-2248, Dec. 29, 1989.

[5]1989 Minn. Laws, c. 335, art. 3, § 39.

Judicial Information System (SJIS). Based on information for the years 1985 though 1989, the CCSC examined the courts' compliance with the case-processing time objectives. Tables 1.2 and 1.3, below, display the statewide averages for felony and gross misdemeanor cases:

TABLE 1.2

STATEWIDE FELONY DISPOSITION PERCENTAGES

	Within 4 months	Within 6 months	Within 12 months
GOAL	90%	97%	99%
1985	64%	85%	97%
1986	65%	85%	97%
1987	64%	83%	97%
1988	63%	83%	97%
1989	61%	82%	97%

TABLE 1.3

STATEWIDE GROSS MISDEMEANOR DISPOSITION PERCENTAGES

	Within 4 months	Within 6 months	Within 12 months
GOAL	90%	97%	99%
1985	79%	90%	98%
1986	80%	90%	98%
1987	81%	92%	99%
1988	81%	92%	99%
1989	80%	92%	99%

Although some variation existed between districts,[6] these tables illustrate that the state courts have consistently substantially achieved resolving 99% of their felony and gross misdemeanor cases within twelve months. As of December 1988, for

[6]A district by district breakdown of the data in Tables 1.3 and 1.4 is set forth in the Appendix.

example, only 96 felony cases in the state were over a year old.[7] The courts are not as close to meeting the four and six month goals, however, with gross misdemeanor dispositions closer to the goals than felony dispositions.

The CCSC examined several factors that might affect compliance with the four and six month goals. For example, the CCSC received comments that preparation of presentence investigation reports (PSI reports) often caused routine delays of six to eight weeks. Excluding the time necessary for preparation of PSI reports increased compliance with the four and six month goals, particularly in felony cases; an example of the impact on the 1988 figures is set forth in Table 1.4, below.

TABLE 1.4

1988 FELONY AND GROSS MISDEMEANOR CASE DISPOSITIONS

EXCLUSIVE OF PSI REPORT PREPARATION TIME

	Within 4 months	Within 6 months	Within 12 months
GOAL	90%	97%	99%
Felony	76% (+12%)	89% (+6%)	98% (+0%)
Gr.Msdmr.	85% (+3%)	94% (+1%)	99% (+0%)

The CCSC also heard evidence indicating that felony cases had a higher trial rate, which would result in a greater disposition disparity at the four and six month goals. An analysis of trial rates supports this contention. For example, 1988 felony trial rates ranged from 3% to 8% with a statewide average of 5 1/2%,

[7]Letter from Sue K. Dosal, State Court Administrator, to Trial Court Administrators (Feb. 15, 1989).

while gross misdemeanor trial rates for that year ranged from 1% to 5 1/2% with a statewide average of 2%.[8]

The CCSC recognized these case disposition results as positive, considering that the overall caseload of the trial courts has increased by 2% from 1985-1989, and felony and gross misdemeanor filings increased 16% and 34%, respectively, during this period. Major case types, including felonies and gross misdemeanors, which constituted only 10% of the 2 million cases filed in 1989, accounted for over three fourths of the judicial workload. In comparison, minor case types, including traffic and non-traffic misdemeanors and petty misdemeanors, take little judicial time but require almost as much administrative and clerical time and effort as major cases.[9]

A broader perspective is also helpful to understand where Minnesota's trial courts are in terms of efficiency. The National Center for State Courts conducted two recent studies of civil and criminal case-processing times in urban trial courts across the United States. The first study analyzed data from eighteen urban trial courts, including Minneapolis, based on systematic samples of 500 felony cases and 500 civil cases from the years 1983-85. In terms of median total disposition time, Minneapolis ranked eighth; only Oakland, New Orleans, Phoenix, San Diego, Dayton, Detroit Recorders Court, and Portland ranked ahead of Minneapolis.

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[8]See the table in the Appendix.

[9]Case Management Plans, *supra*, note 1, at 7 and Appendix B, Table 1.

Measured against the same criminal case-processing standards adopted by the Conference of Chief Judges, Minneapolis ranked seventh, with 64% completed within 120 days (high was 85%); 78% completed within 180 days (high was 91%), and 93% completed within 1 year (high was 97%).[10]

A follow-up study by the National Center for State Courts was expanded to 26 jurisdictions, including St. Paul, and was also based on systematic samples of 500 civil and 500 felony criminal cases from 1987. In median total disposition time, St. Paul was the fourth fastest court, and Minneapolis ranked tenth. When median times for upper or general jurisdiction courts only were compared, both St. Paul and Minneapolis ranked among the fastest eight courts in civil cases and among the middle nine courts in criminal cases. This suggests a healthy balance; Minnesota's metro courts are not sacrificing one type of case for the sake of processing the other type.[11]

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[10]B. Mahoney, A. Aikman, P. Casey, V. Flango, G. Gallas, T. Henderson, J. Ito, D. Steelman, & S. Weller, *Changing Times in Trial Courts, Caseflow Management and Delay Reduction in Urban Trial Courts* (1988) (National Center for State Courts, Williamsburg, VA) (hereinafter referred to as Mahoney).

[11]J. Goerdt, C. Lomvardias, G. Gallas, B. Mahoney, *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts* (1989) (National Center for State Courts, Williamsburg, VA) (hereinafter referred to as Goerdt). Compared to the Conference of Chief Judges' timing objectives, St. Paul ranked 7th, with only 18% of its cases exceeding 180 days disposition time, and 14th, with only 11% exceeding the 1 year disposition time. Minneapolis ranked 11th, with 29% exceeding 180 days, and 16th, with 13% exceeding 1 year. *Id.*

No studies exist which examine courts in greater Minnesota. However, experiences of other states' rural courts have been studied.[12] Nationwide, limited resources are a significant factor in criminal case processing in rural courts, along with difficulties associated with large territories. Some of the limitations include a lack of investigators for both prosecution and defense, limited alternatives to incarceration, inadequate juvenile facilities, and unavailability of mental health experts.

Opinions and Observations of the Participants. Many victim's advocates groups and prosecutors asserted to the CCSC that delayed disposition of cases benefits defendants and hurts both individual victims and society as a whole.[13] The prosecution's case weakens over time because, for example, witnesses' memories fade or physical evidence gets lost. Victims suffer waiting, for example, to get restitution for their injuries. Prosecutors and advocates conceded, however, that a system involving case scheduling of such speed as to deprive defendants and defense lawyers of the opportunity to prepare and to conduct an effective defense, and procedural rules which prevent legitimate plea negotiation at the

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[12] Miller, *Delay in Rural Courts: It Exists But it Can be Reduced*, 14 State Court Journal 23, 27-9 (Summer 1990).

[13] *E.g.*, testimony of Frank Wood, St. Paul public hearing, that detection and swift adjudication, rather than incarceration and long sentences, deter crime; testimony of Pat Peterson, Minneapolis public hearing, that delay impacts adversely on crime victims by keeping the crime fresh and allowing the offender more time to harass the victim. Delay also may impair prosecution as victims become reluctant to participate. Finally, treatment for the offender is also delayed.

latter stages of case processing, tend to place the entire system into disrepute.[14] Every CCSC member or witness who touched upon the topic agreed that case-processing times should be goals, rather than standards, and that only in circumstances of significant noncompliance should the failure to meet case processing goals be of concern.

Finding

1.1 While the productivity of the court system, and of the criminal justice system as a whole, can be most easily measured using time-related case-processing standards, the exclusive reliance on these standards does not necessarily lead to either the appearance or reality of true criminal justice.

Recommendation

1.1 Case-processing objectives should be goals, rather than standards, and only in circumstances of significant noncompliance should there be concern over the failure to meet case processing objectives.

Adequate and Balanced Funding for the System As a Whole

The most serious concern consistently voiced to the CCSC was the frustration that all elements of the criminal justice system experienced from the lack of appropriate funding for certain areas of the criminal justice system, and not necessarily only in their

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[14] *E.g.*, testimony of Judge Bernard Boland, St. Cloud public hearing, that some cases are already moving too fast for overloaded public defenders; testimony of Chuck McLean, Marshall public hearing, that an examination of efficiency in the courts should be concerned with not only delay and cost, but also with errors, fairness, understandability, availability, consistency, predictability, and flexibility; testimony of John Moosbrugger, St. Cloud public hearing, that public perception is important but that defendants must also feel that they are being treated fairly.

own bailiwicks.[15] The CCSC found that it was not beneficial to increase prosecution budgets or to reallocate judicial resources to combat increasing caseloads if concomitant adjustments in funding were not made in probation, corrections, and especially in public defense.[16] All members of the CCSC agreed that the most important function that the CCSC could serve would be to increase public attention and commitment to an adequate funding of the Minnesota criminal justice system as a whole.

The most commonly recurring complaint the CCSC heard was the current frustrating propensity of the Legislature to combat the evermore pervasive and dangerous criminal activity in this state with the enactment of more criminal statutes and the enhancement of offense severity to the almost total exclusion of adequate funding of prosecution, defense, probation, and corrections resources.[17] Differentiated Case Management systems, Case Flow control, "Fast Tracking," decriminalization of minor offenses, and streamlining rule changes will only be successful in enhancing the

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[15]Witnesses indicated that more judges are needed (Judge Joanne Smith, St. Paul hearing), as are more public defenders and investigative staff (Colia Cecil, St. Paul hearing), more probation and corrections staff (Paul Keif, Bemidji hearing), and more prosecutorial staff (Robert Molstad, St. Paul hearing).

[16]*E.g.*, letter from Minnesota Citizen's Council on Crime and Justice (May 5, 1990); letter from Terrence Walters (June 6, 1990).

[17]Local hiring freezes make it difficult to carry out new legislative mandates (testimony of James Konen, St. Paul hearing). For example, when gross misdemeanor DWI was created, the public defender's caseload in one district doubled (testimony of Paul Keif, Bemidji hearing).

efficiency of the criminal justice system when the weakest, most underfunded element in the system can make these innovations work. An early plea of guilty by a well-informed, well-counseled defendant does not result in a speedy case disposition if it takes eight to ten weeks for an overworked, understaffed Court Services Department to prepare a presentence investigation (PSI) report.

One immediate change that would help alleviate this problem is to require a financial impact statement for any new legislation having a direct or indirect impact on the criminal justice system. Current law requires "fiscal notes" only when requested by the chair of a standing legislative committee or the commissioner of finance, and these "fiscal notes" are limited to their impact on state agencies.[18] A committee studying the federal courts has also recommended criminal justice system financial impact statements.[19]

Findings

1.2A Funding of less than all of the related elements of the criminal justice system is not beneficial.

1.2B Current law does not routinely provide the legislature with the necessary financial impact information.

Recommendation

1.2 A criminal justice system financial impact statement should be required as a portion of the bill submission in any bill having direct or indirect impact on the criminal justice system.

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[18]Minn. Stat. §§ 3.98, 3.982 (1990).

[19]Report of the Federal Court Study Committee (April 2, 1990).

Omnibus Hearings

In December, 1989, the Minnesota Supreme Court amended the Rules of Criminal Procedure to require that a Rule 11 omnibus hearing be held within fourteen days of the Rule 8 appearance, with continuances limited to good cause related only to the particular case.[20] The effective date of these amendments was delayed until January 1, 1991, to permit the metro area courts to implement the change. The CCSC spent much time discussing the effectiveness of and need for an omnibus hearing to be held within fourteen days of the Rule 8 appearance.

The CCSC discovered that omnibus hearing practices differ from district to district. In two judicial districts, the Fourth and a portion of the Sixth, omnibus hearings are set prior to the trial date only on demand. This was also the rule in the Second District until its adoption, on September 1, 1990, of a Differentiated Case Management System providing in certain cases for an omnibus hearing within fourteen days of the Rule 8 hearing. In other districts, omnibus hearings are set in all or substantially all cases. In only one district (a portion of the First), however, did the CCSC find that contested omnibus hearings were actually held in even as many as thirty percent of the cases. Some of the districts in which omnibus hearings were routinely scheduled required a special demand by the defense for the production of prosecution witnesses;

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[20]R.Crim.P. 8.04; 11.07; 19.04, subd. 5.

otherwise, the hearing is held on the existing record or waived outright.

The various districts also differ in the way decisions are announced in contested cases. In at least two districts, the Fourth and the Second, rulings are generally announced from the bench at the conclusion of the hearing. In most districts, however, rulings are taken under advisement for a period of several days to as long as 60 days.

Although opinions were as diverse as the practices, most defense-orientated witnesses testified that a hearing within only fourteen days, especially in the case of overscheduled full-and part-time public defenders, was simply not enough time to investigate and adequately prepare for a contested hearing. Neither was fourteen days enough time to develop trust between the defendant and defense counsel.

The CCSC ultimately concluded, and judges who testified almost uniformly agreed, that an early, meaningful court proceeding some time within approximately a month of the Rule 8 hearing could serve to facilitate relatively early disposition in a very high number of cases. A meaningful hearing requires an adequately prepared defense counsel and prosecutor who are responsible for trying the case, accurate criminal-history scores, and victim input. The current experience of one judicial district, the Fourth, applying such a program is approaching a seventy-five percent overall disposition rate by diversion, dismissal or guilty plea at such a

pretrial hearing held approximately thirty days after the Rule 5 appearance.

The testimony taken and arguments advanced before the CCSC parallelled to a large extent discussions held by the Supreme Court Advisory Committee on Rules of Criminal Procedure. In its October 29, 1990, report to the Supreme Court, the Advisory Committee continued its support of timely omnibus hearings, but recommended several clarifying changes, with which most districts would already be in substantial compliance. The CCSC supports the comments and recommendations of the Advisory Committee.

Finding

1.3 The CCSC strongly supports the October 23, 1990, Report of the Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure as it relates to omnibus hearings.

Recommendation

1.3 The Rules of Criminal Procedure should be amended so as to adopt the October 23, 1990, Report of the Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure as it relates to Omnibus Hearings.[21]

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[21]Those changes were recently adopted by the Supreme Court. *See* Order of the Supreme Court, Promulgation of Amendments to the Rules of Criminal Procedure, C1-84-2137, Nov. 29, 1990 (amendments effective January 1, 1991) (a partial summary is set forth in the appendix to this report). The CCSC commends the Advisory Committee and thanks the Supreme Court for their willingness to reconsider the issue and for recognizing the diverse needs of the various parts of the criminal justice system.

Jury Selection

Voir dire, according to all the evidence before the CCSC, is an important process. It gives counsel the opportunity to get to know potential jurors, so that a fair and impartial jury can be selected. Prosecutors and defenders want to retain voir dire and improve it by use of a uniform questionnaire, which would allow them to have more information about jurors earlier in the process.

Several witnesses testified before the CCSC to the continuing need for jury trials in certain misdemeanor offenses and, therefore, strongly opposed decriminalization of many misdemeanor offenses. However, witnesses likewise testified before the CCSC that while the jury trial was necessary and desirable, the method of jury selection caused significant delays in relatively minor cases. They recommended to the CCSC that the so-called "federal method" of jury selection, conducted almost exclusively by the trial judge, be mandated in misdemeanor trials. They believed that judge-conducted voir dire, coupled with the availability of adequate jury questionnaires, would enhance the efficiency of the selection process and the overall fairness of the system. However, most defense lawyers asserted that lawyer-conducted voir dire was necessary to facilitate intelligent use of peremptory challenges. All who testified agreed, however, that whatever knowledge the lawyers could have about the jurors in advance of the selection process aided in both the speed and effectiveness of the voir dire process.

Finding

1.4 While it may be of use in certain isolated cases to adopt the modified voir dire process, such action should be taken on a case-by-case rather than uniform basis. In all cases, however, a well-reasoned, extensive juror questionnaire should be made available to the lawyers for their use in the voir dire process.

Recommendation

1.4 The Rules of Criminal Procedure should be amended to include a standard juror questionnaire form for use in criminal cases as a supplement to voir dire.

Certification of Petty Misdemeanors

Both the rules and statutes allow the prosecutor to certify what would otherwise be a misdemeanor as a petty misdemeanor, with the consent of the court; the rules additionally require the consent of the defendant, while the statutes do not.[22] Some dispute remains over whether the rules or the statutes prevail, although it appears that most courts follow the rules and require consent of the defendant to petty misdemeanor certification.

While the total decriminalization of certain misdemeanors and petty misdemeanors will be discussed below, many witnesses who testified before the CCSC supported allowing the prosecutor to certify with the consent of the court only, but without the consent of the defendant. This is particularly true in cases of state statute violations or municipal ordinance infractions which have

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[22]*Compare* R.Crim.P. 23.04 and Comment 1990 *with* Minn. Stat. § 609.131 (1990) as construed in *State v. Batzer*, 448 N.W.2d 565 (Minn. App. 1989).

been issued as misdemeanors by arresting officers without prosecutor input. Prosecutors from the St. Cloud area and from other jurisdictions involving high numbers of college students particularly desired this ability in the cases of minor consumption, disorderly conduct or party ordinance violations, which they almost universally associated with the college phenomena of "keggers."

Many witnesses urged the total decriminalization of underage possession or consumption of alcohol, arguing that such offenses are really more akin to status offenses, not involving any demonstrable criminal intent on the part of the defendant. At least one witness also indicated that the predictably negative interaction between police officers and college-aged defendants in such circumstances leads to an abnormally high proportion of jury demands in these minor cases. Therefore, prosecutors continue to support their police departments by prosecuting these defendants, but as non-criminals through the petty misdemeanor certification process.

Representatives of the defense bar generally opposed any inroads into a defendant's right to a trial by jury. A significant number, however, conceded that in the case of minor misdemeanor offenses, the defendant's right was more philosophical than real. Often it was based more upon a lack of a full appreciation of the system than upon a genuine desire to have the case heard by a jury of the defendant's peers. Although no data exist to support such a proposition, some CCSC members thought that a misdemeanor

defendant who refuses petty misdemeanor certification and goes to jury trial often receives a harsher sentence.

Several CCSC members argued that "sit-in" trespassing cases, *e.g.*, at Honeywell and Planned Parenthood, or other social protest cases may justify a jury trial. Others asserted that allowing protestors an unlimited right to a jury trial could bring the court system to a standstill. The CCSC agreed, however, that defense objections to certification are not the norm.[23] Defense objections to certification alleging that deprivation of the right to jury trial is the sole purpose of the certification routinely result in denial of certification by the court. The CCSC is concerned that such objections continue to routinely result in denial of certification by the court.

The CCSC was also concerned that courts in greater Minnesota do not always appoint counsel for matters certified as petty misdemeanors, notwithstanding the clear statutory and rule requirements.[24] Unrepresented defendants place the court, and sometimes the prosecutor, in the awkward and conflicting situation

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[23]One Commission member noted that the so called "beer riots" which occurred in the St. Cloud area several years ago produced mass arrests, but only a handful of trials. The remaining defendants all agreed to certification of the offenses as petty misdemeanors.

[24]Minn. Stat. § 609.131 (1990) (defendant's eligibility for appointment of counsel must be evaluated as though the certified offense were a misdemeanor); R.Crim.P. 23.05, subd. 2 (mandates appointment of counsel when a certified offense involves moral turpitude).

of advising the defendant as to the advantages and disadvantages of certification.

The CCSC's recommendation would require amendment of section 609.131 of the Minnesota Statutes by deleting subdivision 2 thereof, which sometimes requires defendant's consent to certification. It would also require amendment of Rule 23.04 of the Rules of Criminal Procedure, which currently requires defendant's consent to certification of any misdemeanor.

Finding

1.5 Prosecutors should be given, in the rules and the relevant statutes, the option to certify misdemeanor offenses as petty misdemeanors, with the approval of the court. It would be clear that no conviction obtained after a certification to which the defendant has not agreed may be used for charging an enhanced offense at a later date, nor may any such conviction be used to disqualify a defendant in a later prosecution from receiving "first offender treatment" by way of continuance for dismissal, pretrial diversion, or expungement rights.

Recommendation

1.5 Prosecutors should be given, in the rules and in the relevant statutes, the option to certify misdemeanor offenses as petty misdemeanors, with the approval of the court. It would be clear that no conviction obtained after a certification to which the defendant has not agreed may be used for charging an enhanced offense at a later date, nor may any such conviction be used to disqualify a defendant in a later prosecution from receiving "first offender treatment" by way of continuance for dismissal, pretrial diversion, or expungement rights.

Administrative Remedies; Forfeitures; Decriminalization

The charge to the CCSC included examining decriminalization of minor offenses. The CCSC discovered immediately that

decriminalization is a broad term encompassing removal of penalties from offenses, *i.e.*, "legalization," diversion projects, administrative remedies, and providing simplified procedures for offenses carrying only civil penalties. The CCSC focused on the administrative process and civil violation approaches, as discussed below with respect to motor vehicle offenses. Outright legalization was rejected as outside the CCSC's mandate and as a decision more appropriate for the Legislature. The CCSC recommends, however, that the Legislature establish a minimum amount for bad check violations, also discussed below.

The CCSC agreed that diversion projects, such as the Worthless Check Diversion Program currently being monitored in Scott County, should be evaluated and encouraged, but the CCSC was unable to determine what impact these programs will have on the efficiency of criminal case-processing. Finally, the CCSC also rejected the expanded use of referees and other quasi-judicial officers. Such an expansion is contrary to the recent and popular trend toward unification of the trial courts.

Traffic and Driver's License Offenses. Several witnesses who appeared before the CCSC recommended decriminalization of driving without liability insurance.[25] As with the underage consumption of alcohol offense discussed above, these witnesses testified that a person driving without insurance does not have the appropriate criminal intent to support a criminal conviction. They also

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[25]Minn. Stat. § 65B.67 subd. 4 (1990).

indicated that their experience showed that most such offenders received a misdemeanor level fine, as opposed to incarceration. These financial penalties tended to encourage further driving without insurance because the monies available for insurance premiums were paid as fines.

Witnesses testified that insurance offenses are better dealt with through loss of driving privileges and motor vehicle registration. These witnesses also testified that since it is the motor vehicle registration that verifies the existence of insurance at registration anyway, administrative agencies within the Department of Transportation were better equipped, better suited, and more appropriate for dealing with no-insurance offenders.

A number of CCSC members acknowledged that insurance offenses were often dealt with by a continuance to show proof of insurance or a continuance for dismissal, with court costs and a promise to not drive without insurance during the continuance period.

The CCSC also heard testimony concerning the significant time devoted by law enforcement in processing warrants for unpaid traffic fines.[26] The arrests which follow issuance of the warrants strain pre-trial holding facilities and crowd arraignment calendars. These unpaid fines are generally less than $100, and most are routinely forgiven by judges after an arrested person has spent one or more nights in jail awaiting arraignment.

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[26] *E.g.*, testimony of Bob Bloedow, Minneapolis hearing.

Classifying parking and minor traffic offenses as civil violations would free up court time because simplified procedures could be used. Although the time savings on a case-by-case basis would be small, the total savings could be substantial. Data from SJIS indicate that in 1989 there were 694,384 adult misdemeanor traffic offenses, 16,594 juvenile traffic offenses and 818,883 parking offenses filed statewide. Again, law enforcement is not adequately staffed to execute arrest warrants issued for such violations, and enforcement could be handled by the Department of Public Safety's Driver and Vehicle Services Division through non-renewal of driver's licenses and impoundment of registration plates.

Findings

1.6A The offense of driving without valid and collectible insurance should be made administrative rather than criminal, subjecting the offender to loss of driving privileges and registration certificates concomitant with the frequency and extent of such violation. Unpaid fines for petty misdemeanor traffic offenses should become a lien upon the motor vehicle in which the offense was committed, which would obviate the need for issuance of arrest warrants for such offenses.

1.6B Parking and minor traffic offenses take up a significant amount of court and law enforcement time, and law enforcement does not have sufficient resources to effectively execute arrest warrants. Reclassification of these violations as civil matters would relieve the court system and law enforcement and reduce delay.

Recommendations

1.6A Section 65B.67, subdivision 4, sentence 1, of the Minnesota Statutes should be repealed. The authority of the Department of Public Safety's Driver and Vehicle Services Division should be substituted to revoke the driver's license and registration privileges of a person found to have been driving without valid insurance, pursuant to an administratively determined schedule of

suspension periods, for no less than 10 days. In addition, legislation should be enacted declaring unpaid fines for petty misdemeanor traffic offenses to be a lien upon the motor vehicle in which the offense was committed, rather than be a personal charge against the offender. Finally, the issuance of arrest warrants for unpaid fines should be abandoned.

1.6B Parking and non-moving traffic offenses should be reclassified as civil offenses with monetary sanctions as the primary penalty. The Department of Public Safety's Driver and Vehicle Services Division should be responsible for more severe sanctions including non-renewal of licenses and impoundment of plates.

Worthless-Check Offenses. Decriminalization of worthless-check offenses was urged by judges, prosecutors, and defenders throughout the state. A number of city prosecutors suggested that the demands of prosecution time, especially for part-time prosecutors, in the pursuit of small worthless-check offenses was significantly disproportionate to their importance. However, a smaller group of municipal prosecutors strongly urged the importance of worthless-check prosecutions, especially in jurisdictions containing large shopping malls or concentrations of retailers.

It seemed inappropriate to most CCSC members to allow careless local retailers to place an undue demand upon scant criminal justice resources by using the courts as a collection agency. A person writing and presenting a certain monetary value of non-sufficient funds checks, however, is truly criminal rather than merely negligent in financial dealings. A minimum value indicating intent is not easy to establish, so the CCSC had to make some

arbitrary decisions, based on the best evidence available, which attempt to address criminal intent in worthless-check prosecutions.

Complete decriminalization of check offenses did not seem appropriate to the CCSC. A number of national studies[27] reviewed by the CCSC indicated that at least some of the increase in drug crimes, especially drug possession in metropolitan areas, is financed by worthless checks. Accordingly, the CCSC opposes complete decriminalization of worthless-check offenses, but recommends a $100.00 jurisdictional minimum.

Finding

1.7 Worthless-check offenses can place a tremendous strain on local prosecution efforts and the courts, but should be pursued when some evidence of criminal intent is present.

Recommendation

1.7 Section 609.535, subdivision 2, of the Minnesota Statutes should be repealed and worthless-check violations under section 609.52 of the Minnesota Statutes should have a jurisdictional minimum of $100, which minimum may be met by aggregation of offenses occurring in the same or different counties, and local ordinances establishing a lower jurisdictional minimum should be prohibited.

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[27]J. Martin, J. Goerdt, *The Impact of Drug Cases on Case Processing in Urban Trial Courts* (1989) (National Center for State Courts, Williamsburg, VA); Getty, *Preliminary Program Description: Fast Track Case Processing of Adult Drug Offenders* (1989) (Cook County, Illinois).

Application of Misdemeanor Rules to Gross Misdemeanors

Gross misdemeanor offenses must be prosecuted under the extensive felony Rules of Criminal Procedure.[28] The CCSC considered, but did not adopt, the recommendation that the more simple misdemeanor Rules of Criminal Procedure[29] be applied to gross misdemeanor cases. A divergence of opinion developed on this issue.

A number of witnesses testifying at the public hearings discussed the misdemeanor versus felony rule issue. Most, but not all, of those discussing the subject seemed to agree that the misdemeanor rules should be applied to gross misdemeanors, at least those that are merely enhanced misdemeanors. This was because a majority of gross misdemeanors are actually enhanced misdemeanor offenses, and the prosecutor responsible for prosecuting gross misdemeanors is usually the same as for misdemeanors.

A number of witnesses also testified that gross misdemeanors were similar or identical to misdemeanors and, in most cases, dissimilar from felonies. A number of the CCSC members agreed. Other members believed that although some efficiencies might result from application of the misdemeanor rules to gross misdemeanors, the felony rules provide important procedural protections that should be preserved. For example, in certain areas of the state,

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[28]*E.g.*, R.Crim.P. 5.02, subd. 1 (appointment of counsel); 8.02 (plea); 9 (discovery); 10.04 (motions); 11 (omnibus hearing, plea, trial date); 13 (arraignment).

[29]*E.g.*, R.Crim.P. 5.02, subd. 2 (appointment of counsel); 5.04 (plea); 6.06 (trial date); 12 (pretrial conference).

the right to counsel and discovery may be affected by application of the misdemeanor rules to gross misdemeanors.

The CCSC discovered that, historically, the Rules of Criminal Procedure were drafted with a focus on felony cases. Only late in the initial drafting of the rules were misdemeanor cases considered, and a separate set of misdemeanor rules hastily added. At that time, the few gross misdemeanor crimes then in existence were more like felonies than misdemeanors, and the felony prosecutors had jurisdiction over them. The decision was therefore made to apply the felony rules to gross misdemeanor crimes. The CCSC concluded that the Advisory Committee should reexamine the procedures applicable to all categories of misdemeanors.

Finding

1.8 Although application of the misdemeanor Rules of Criminal Procedure to gross misdemeanors might result in efficiencies, misdemeanor rules were not initially intended to apply to the then existing gross misdemeanors, and the felony rules currently applicable to gross misdemeanors preserve important procedural protections.

Recommendation

1.8 The Rules of Criminal Procedure applicable to all categories of misdemeanors should be reexamined.

Case Management

Extensive discussion by the CCSC and testimony at the public hearings centered on various alternatives for the scheduling of criminal cases. Almost everyone agreed that the parties, and particularly the defendant, should not leave the courtroom at any

appearance without being given a date and time for the next appearance. In a number of jurisdictions, a defendant who enters a guilty plea does not immediately receive a date for sentencing because no one knows when the PSI report will be completed.

Members of the trial bar from both sides agreed that it was inappropriate to place the burden of guaranteeing the defendant's reappearance solely on the defense lawyer. Not having a definite sentencing date requires additional monitoring of defendants to ensure their presence at the return of the PSI report and sentencing. Similar problems exist in a number of jurisdictions regarding setting a trial date following a contested evidentiary hearing. Many jurisdictions do not establish a fixed date for the return of the court's ruling, nor do they establish a trial date as the defendant's next appearance.

Another matter of scheduling that was discussed at two of the public hearings was night or weekend court sessions. Most CCSC members determined that this was a local concern, and that the CCSC should make no recommendation for a uniform rule. Studies indicate that neither time nor money is saved by night or weekend court, except in cases of a significant shortage of courtroom space. The cost of building more court facilities is eliminated by the extended use of existing facilities.

Likewise, opinions differed whether the Rule 5 and 8 hearings should be combined or should remain separate. Those jurisdictions where the defendant had a lawyer present at the Rule 5 hearing suggested combining the Rule 5 and 8 hearing. In those

jurisdictions where the defendant does not usually have a lawyer present at the Rule 5 hearing, Rule 8 hearings are necessary so counsel can assume representation and make an appropriate presentation under Rule 8. Again, the CCSC felt that differences were a matter of local concern. Thus, the CCSC makes no recommendation as to whether the Rule 5 and 8 appearances should be separate or combined.

Additional case management issues affecting Omnibus Hearings, plea negotiations, and telephone participation are discussed elsewhere in this report. A summary of recent amendments to the Rules of Criminal Procedure affecting case processing is also set forth in the Appendix.

One final issue that creates problems for the trial bench and bar is the inconvenience caused by the August 1 effective date of most criminal legislation. This does not permit the type of preparation and discussion necessary to implement many pieces of legislation because of unavoidable delay in printing and distributing the session laws; also, it is simply too close to the vacation season. The Judges Association normally meets for continuing education in early September. An October 1 effective date would be more convenient.

Findings

1.9A It is in the interest of efficient administration to reduce the number of missed appearances and bench warrants if the scheduled date and time for a next hearing is established before a defendant leaves the courtroom at any appearance.

1.9B The traditional August 1 effective date for most criminal legislation is too early to permit implementation of new

laws; an October 1 effective date would be more convenient.

Recommendations

1.9A The Chief Judges of all districts should establish a uniform policy within their districts of setting the next event date prior to the conclusion of any hearing.

1.9B The effective date of all criminal justice related legislation should be changed to October 1.

Plea Negotiations

At several public hearings, the CCSC received evidence on the issue of whether plea negotiations should be allowed to include sentencing agreements. In a number of judicial districts, as well as portions of districts, prosecutors routinely make settlements which include a sentence limitation. Such plea negotiations are generally accepted by trial courts in these jurisdictions with the caveat that if the judge deems it appropriate to sentence in excess of the negotiated limitation, the defendant would be allowed to withdraw the guilty plea. Little testimony was presented from the jurisdictions where that practice was followed, and no one spoke against it. In those jurisdictions where sentence bargaining was not followed because of local rule or custom, some support for it was expressed. The CCSC, nevertheless, decided that this is a matter of individual prosecutorial discretion and should best be left to negotiations between appropriate prosecuting authorities and the trial bench in the various jurisdictions. This requires that any local rules prohibiting the practice be repealed.

Several CCSC members objected to such a prohibition as it would also prohibit local rules that establish plea cut-off dates, and such dates are helpful in processing cases. Plea cut-off dates impact an already overburdened public defender system, adversely affecting indigent clients. If a meaningful procedure is implemented, a large portion of cases would settle and, therefore, obviate the need for plea cut off dates. For example, under a new procedure implemented in Ramsey County, all parties and their counsel are required to be present at the arraignment and prepared to discuss the facts of the case; already, 33% of the defendants plead guilty at the arraignment. Such a procedure did not appear to be present in any of the available studies which recommend plea cut-off dates.

Finding

1.10 Plea negotiations as to charge or sentence, or both, should be a matter of individual prosecutorial discretion and should best be left to negotiations between appropriate prosecuting authorities and the trial bench in the various jurisdictions. This requires that any local rules prohibiting the practice, or otherwise limiting plea bargaining, be prohibited.

Recommendation

1.10 The Rules of Criminal Procedure should be amended by adding a prohibition against local rules which would in any way prohibit or infringe upon the rights of the parties to engage in plea negotiations either as to charge or sentence, and of the court to approve or disapprove such bargains.

Criminal History Information

Both prosecutors and defenders agreed that in many cases, particularly in the metropolitan area, plea negotiations cannot occur until a reasonably accurate picture of the defendant's criminal history is available.[30] The defendant's criminal history generally comes as part of a PSI report. Preparation of the PSI report can take from three to eight weeks, depending on the county and the defendant's custody status.

Some of this delay is due to the difficulty of getting accurate and complete criminal history information from the Minnesota Bureau of Criminal Apprehension (BCA). Criminal history scores are not always up-to-date, due to delays in getting the information from local jurisdictions and entering the data into the BCA's data base. Courts must submit and the BCA must process criminal history data expeditiously.

In addition, records of juvenile offenses, misdemeanor convictions, and crimes in other jurisdictions are not included in the BCA's version of the criminal history score. Getting information from other states directly is very time consuming. For example, Hennepin County had considered placing an employee in Chicago solely to review criminal histories because Chicago will more expeditiously process personal requests. Such extreme measures clearly indicate a tremendous need for additional

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[30]Guilty pleas are often conditioned on certain criminal history information being accurate.

resources in gathering, maintaining, and disseminating criminal history information.

Further delay in calculating criminal histories is caused by the difficulty in reading the BCA's computer generated reports. The report is generated sequentially, not by case. The BCA is attempting to alleviate this problem through training seminars and redesign of its system. The BCA is also involved in a joint effort with the other criminal history reporters within the criminal justice system to attempt to resolve the reporting and delay problems. Although these efforts will help and should be encouraged, the need for additional resources is still of paramount concern. Many counties lack computer terminals that can directly access BCA data. Other available technology should also be implemented.

The CCSC also heard testimony stressing the importance of victim input into the complex PSI reports. If the PSI report is prepared too quickly, victim input required under the Crime Victim's Rights Act may be unavailable, missed, or overlooked.[31] The CCSC agreed, however, that preparing the criminal history portion of the PSI report, often referred to as the sentencing worksheet, could be accelerated without losing victim information from the body of the PSI report.

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[31]Testimony of Fran Sepler, St. Paul hearing; Testimony of Paul Gustad, Duluth hearing. Under chapter 611A of the Minnesota Statutes, the Crime Victims Rights Act, victims of crime have the right to notice and opportunity to be heard regarding plea negotiations, restitution, and disposition.

Most jurisdictions represented at the public hearings and on the CCSC agreed that the lack of an accurate and dependable criminal history score significantly delays the early resolution of even the simplest cases. Members of the CCSC and those testifying before it decried this deficiency in Minnesota's criminal justice system. An accurate criminal history score, available at the earliest possible time, gives certainty to prosecutors and defenders attempting to negotiate criminal cases.

Some districts begin developing the criminal history score at the time of arrest. Anoka County starts developing this information at the time of the bail evaluation. A record check is done on everyone who comes to court. In Detroit, Michigan, police must attach a copy of the criminal history before the complaint will issue. Corrections representatives on the CCSC pointed out that court services departments are already overworked, and that getting them involved at an earlier point of the proceedings will require additional funding. Suggestions were also made for a central clearinghouse of sentencing guidelines worksheets, such as the Sentencing Guidelines Commission, and a simple method to retrieve them.

The CCSC considered, but declined to recommend, a procedure which would require defendants to disclose their criminal histories prior to a finding of guilt.

Findings

1.11A Courts and counsel need an accurate criminal history score at the earliest possible time after a defendant is

charged to engage in meaningful negotiations and dispositions.

1.11B Incomplete criminal history scores, and the difficulty in reading BCA criminal history score reports, delay PSI reports. This delay could be alleviated if local jurisdictions reported criminal dispositions quickly and accurately and the BCA in turn processed the information quickly and accurately and in an understandable format.

Recommendations

1.11A Procedures should be implemented in order to obtain an accurate criminal history score starting at the time of the arrest and charging of the defendant. Local jurisdiction should be directed and encouraged to quickly and accurately report criminal dispositions to the BCA and the BCA in turn should be encouraged and directed to quickly and accurately process the information and produce it in an understandable format. Finally, the Sentencing Guidelines Commission should make readily available to all local jurisdictions previously developed guidelines worksheets. The CCSC recognizes that this kind of updating will require funding for computerization and common data retrieval systems, but that savings in earlier disposition of cases, less need for trial dates and attendant costs, as well as earlier sentencing should more than offset those costs.

1.11B Sentencing worksheets should be prepared before a verdict or plea, whenever feasible.

Telephone Participation in Certain Criminal Matters

Testimony before the CCSC proved the difficulties associated with traveling long distances, especially by members of the private defense bar and part-time public defenders, to make non-dispositive appearances. This time, it was suggested, could be far better used in legal research, client contact, and other duties.

Finding

1.12 Traveling long distances to appear in brief, non-dispositive, uncontested, ministerial hearings is not beneficial to the system. The Rules of Criminal Procedure should expressly permit telephone conference calls in such cases, in the discretion of the court.

Recommendation

1.12 The Rules of Criminal Procedure should be amended to provide that in non-dispositive, uncontested, ministerial hearings, including Rule 8 and other hearings as agreed by counsel, the defendant may waive the right to be present and request participation by telephone. The Court may allow the participation of one or more parties, counsel or the Judge through the use of telephone conference calls of such proceedings in its discretion.

CHAPTER 2

JUVENILE COURT PROCEEDINGS

Introduction

Notwithstanding an approximate 10% increase in juvenile court cases over the last three years, Minnesota trial courts consistently have substantially achieved the demanding juvenile offender case-processing time objectives proposed by the state's Conference of Chief Judges. Experts advise that the two key elements of efficient case management are consistency and predictability of case dispositions. Consistency and predictability of outcomes in juvenile court, however, are impeded by the broad range of dispositions available for juvenile offenders. Settlement negotiations in some areas may also be limited by court rules that prohibit the inclusion of disposition recommendations as part of a settlement agreement. Finally, the efficient use of referees, when authorized by statute, is inhibited by the statutory right of a party to demand a hearing before a judge. Adjustments to these limitations require consideration of the philosophy underlying the juvenile court, the best interest of the child, and the constitutional debate over what constitutes due process of law in juvenile court proceedings.

Case Processing

The Conference of Chief Judges is considering adopting case-processing time standards applicable to juvenile delinquency and status offender cases, as well as dependency, neglect, and termination of parental rights cases. Following the format of the criminal and civil standards, the proposed juvenile case standards, set forth in Table 2.1 below, are expressed in terms of the percentage of cases disposed within a specified number of months from filing of the petition:

Table 2.1

PROPOSED JUVENILE CASE PROCESSING STANDARDS
DISPOSITION GOALS

Within 4 months	Within 5 months	Within 6 months
90%	97%	99%

Because of budgetary and time constraints, the CCSC was only able to obtain data on juvenile dispositions at three, five, and six month intervals. Statewide, juvenile court processing percentages maintained by the State Court Administrator were consistent for 1987, 1988, and 1989, with at least 84% disposed of within three months, 93% disposed of within five months, and 95% disposed of within six months. As Table 2.2 below illustrates, the statewide percentages for processing juvenile delinquency and status offenders are higher than the overall juvenile court processing percentages:

Table 2.2

DELINQUENCY AND STATUS OFFENSES

STATEWIDE DISPOSITION PERCENTAGES

	Within 3 months	Within 5 months	Within 6 months
GOAL	90%*	97%	99%
1987	86%	95%	96%
1988	86%	95%	96%
1989	86%	95%	97%

* - Goal represents a 4 month measure; however, data at 4 month interval are unavailable

Measured by the Conference's proposed standards, the juvenile courts appear to be adjudicating juvenile offenders consistently, if not efficiently. Put another way, a need exists to adjudicate juvenile offenders more efficiently, but not an overwhelming need.

Having found a need for increased effectiveness, the CCSC was charged with studying and identifying ways to make the system more efficient, consistent with due process of law, and to consider decriminalization of minor offenses, reclassification of minor offenses, and other administrative or legislative action to expedite the process. Incorporating additional time requirements into court rules or statutes is unnecessary[32] and ineffective in

[32]Court rules governing delinquency and petty offenses currently contain twenty time requirements. For example, Minn.R.Juv.P. 27.02, subd. 1(b) provides that delinquency trials must be held within 60 days if the juvenile is not in custody, or the case is dismissed. Extensions can be granted for good cause, which does not include congested court calendars. *Matter of Welfare of J.D.P.*, 410 N.W.2d 1 (Minn. App. 1987). For a complete listing and flow charts, see *Minnesota Practice* (1985), by J. Sonsteng and R. Scott, vol. 12, at 563-66 and vol. 13, at

expediting the process.[33] With respect to administrative action, the courts have only begun to implement the case-management plans that were recently filed with the legislature. Thus, it is too early to determine whether the plans are in need of amendment or direction. Moreover, available literature suggests that detailed implementation must be executed at the local level by all participants for case management plans to be successful.

With respect to decriminalization, the CCSC's proceedings revealed that "decriminalization" in the context of juvenile offenders could encompass both removal of penalties, *i.e.*, legalization, and pretrial or precharge diversion projects. Legalization as a means of enhancing efficiency may have merit, but the CCSC has rejected the idea because it is essentially a political issue best decided by the legislature, which is more responsive to constituent concerns. No specific juvenile diversion projects were evaluated, and it appears that many courts and/or counties do not have adequate resources to operate such programs.

Although time and budget constraints prevented the CCSC from surveying other jurisdictions, sufficient information was available to identify several factors that make the present system of adjudicating juvenile offenders efficient and to recommend changes to maintain or enhance efficiency. Scholarly articles discussing

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419-23.

[33]J. Samaha, *Criminal Procedure,* 388-393 (1988) (University of Minnesota Law School Professor Joel Samaha, discussing the impact of the Federal Speedy Trial Act of 1974).

delay reduction programs indicate that no single model exists for efficiency. The articles agree on the same factors, such as participation by all principals in the system, and the same themes, such as expectations of the participants and predictability.[34] Testimony at the CCSC's hearings also supports these principles.

Another study committee examining the right to counsel in juvenile matters has also recently noted that consistent, predictable outcomes in juvenile court are important as a method of saving time and money. That committee concluded that where outcome can be predicted, trial time and rescheduling is significantly reduced, and juveniles may be encouraged to admit to their conduct at an earlier stage in the process.[35]

The broad dispositional discretion afforded to the juvenile courts, discussed in greater detail below, suggests that predictability of outcome could be increased by limiting or structuring that discretion. Given the juvenile court's underlying philosophy of the best interest of the child, and taking into account the different local programs and attitudes, guidelines or dispositional schedules may not be useful or acceptable statewide. The same factors militate against the reduction of the statutorily prescribed range of dispositions for serious delinquency offenses. Substantial uncertainty could be reduced for many offenses,

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[34]Mahoney, *supra*, note 10; Goerdt, *supra*, note 11.

[35]*Report of the Juvenile Representation Study Committee to the Minnesota Supreme Court* 25 (June 5, 1990) (file #C0-89-1824).

however, if the reductions are accomplished by a mixture of statutory amendment and prosecutorial discretion.

Finding

2.1 A need for processing juvenile offenders more efficiently exists, but the need is not overwhelming.

Recommendation

2.1 Case-processing time objectives proposed by the Conference of Chief Judges should be goals, rather than standards, and only in circumstances of significant noncompliance should there be concern over the failure to meet case-processing objectives.

Certification of Petty Offenses

Statutes provide a broad range of possible sanctions for juvenile delinquency, extending from counselling or probation to an indeterminate commitment to the Commissioner of Corrections, which may continue to the offender's nineteenth birth date. Moreover, the full range of possible dispositions is available in any delinquency case, regardless of offense severity. Thus a juvenile charged with petty theft faces the same potential penalties as a youth charged with first degree murder. Initially, the only limitation on the juvenile court's discretion is the requirement that the disposition be judged "necessary to the rehabilitation of the child." In 1976, the Legislature added the further requirement that the disposition order state "why the best interests of the child are served by the disposition ordered." A decade later, the Minnesota Court of Appeals added the requirement

that a delinquency disposition must represent the least drastic step necessary for rehabilitation.[36]

The broad discretion afforded to the juvenile courts has been widely criticized because of the potential for arbitrary and excessive dispositions.[37] On the other hand, as Table 2.3 below indicates, in a substantial percentage of delinquency cases, the most serious disposition imposed is a term of probation, a fine, community service, or probation with restitution.

Table 2.3

1988 DELINQUENCY OFFENSES: MOST SERIOUS DISPOSITION[38]

OFFENSE	COUNT / ROW PCT	TO ADULT COURT	STATE DOC	LOCAL CORRECTION	TREATMENT	RESTITUTION	PROBATION	FINE	OTHER	DISMISSED	ROW TOTAL
		1	2	3	4	5	6	7	8	9	
HOMICIDE	1	11 47.8	3 13.0	3 13.0	1 4.3	1 4.3	1 4.3	1 4.3	1 4.3	1 4.3	23 .1
CRIMINAL SEX	2	4 1.1	10 2.8	42 11.7	70 19.5	58 16.2	110 30.6	1 .3	23 6.4	41 11.4	359 1.5
ROBBERY	3	5 3.9	13 10.1	26 20.2	20 15.5	23 17.8	18 14.0	2 1.6	5 3.9	17 13.2	129 .5
ASSAULT	4	24 1.5	53 3.2	198 12.1	133 8.1	398 24.4	316 19.4	38 2.3	179 11.0	294 18.0	1633 6.9
BURGLARY	5	45 2.7	135 8.0	271 16.0	126 7.4	606 35.9	162 9.6	19 1.1	155 9.1	173 10.2	1694 7.1
THEFT	6	7 .3	73 3.2	234 10.2	133 5.8	811 35.2	256 11.1	81 3.5	361 15.7	347 15.1	2303 9.7
NARCOTICS	7	3 1.4	6 2.8	42 19.5	26 12.1	43 20.0	24 11.2	11 5.1	15 7.0	45 20.9	215 .9
DAMAGE PROPERTY	8	12 .6	42 2.1	182 8.9	139 6.8	714 34.9	187 9.2	57 2.8	323 15.7	410 20.0	2045 8.6
OBSTRUCT COURT	9	2 .2	14 1.1	259 20.0	72 5.6	153 11.9	446 34.7	26 2.0	112 8.7	100 7.8	1284 5.4
CAR THEFT	10	22 1.6	120 8.9	277 20.6	128 9.6	311 23.1	189 14.1	20 1.5	143 10.6	133 9.9	1344 5.7
TRAFFIC-DWI	11	8 2.3	4 1.1	23 6.6	41 11.7	60 17.1	54 15.4	63 17.9	52 14.8	46 13.1	351 1.5
OTHER CRIMES	12	32 .7	99 2.1	306 6.4	332 7.0	1109 23.4	606 12.7	350 7.4	829 17.4	1081 23.0	4749 20.0
STATUS OFFENSE	13	2 .0	21 .3	256 3.3	723 9.9	704 9.2	1068 13.8	1358 17.8	1302 17.0	2224 29.1	7660 32.2
STATE TOTAL		177 .7	593 2.5	2219 9.3	1948 8.2	4983 21.0	3403 14.3	2027 8.5	3495 14.7	4922 20.7	23774 100.0

[36]Minn. Stat. § 260.185 (1988); 1976 Minn. Laws, ch. 150; *In Re Welfare of L.K.W.*, 372 N.W.2d 392 (Minn. App. 1985).

[37]*See, e.g.*, Crippen, *Juvenile Law and the Spectre of the Star Chamber*, 11 Minn. Trial Lawyer 7 (Winter 1986).

[38]Source: State Planning Agency.

These figures show that in a substantial proportion of cases involving minor delinquent acts, the availability of the full range of delinquency dispositions is neither necessary nor appropriate. Furthermore, the broad discretion afforded to the juvenile court with respect to dispositions impedes the expeditious resolution of delinquency cases because a defendant can have no reasonable certainty of what consequences may follow if the offense is admitted, resulting in a tendency to contest even minor charges. The problem is exacerbated by court rules, discussed below, which provide that settlement agreements should not include recommendations as to the disposition of the case. Consequently, it would be beneficial to establish a procedure by which less serious delinquency offenses could be designated as petty offenses which would be subject to a limited range of less severe sanctions as set forth in Minnesota statutes, section 260.195.

Legislation should be enacted allowing a delinquency offense to be treated as a juvenile petty offense if the prosecutor certifies that it is in the best interest of the child to do so, and the court approves that certification.

This recommendation is patterned after section 609.131 of the Minnesota Statutes, which applies to adult criminal proceedings and which provides for certification of misdemeanors as petty misdemeanors by motion of the prosecuting attorney. This procedure was first introduced in Minnesota with the promulgation of Rule 23.04 of the Minnesota Rules of Criminal Procedure in 1975. Testimony before the CCSC has indicated that the procedure is

widely accepted and utilized throughout the state, and the practice is generally approved by the criminal justice system as a whole.

The classification of "juvenile petty offense" currently includes only offenses prohibited because of the age of the offender, but which would be lawful if committed by an adult (with the exception of possession of a small amount of marijuana, which is a petty misdemeanor for an adult). The recommendation would allow offenses, otherwise defined as delinquency offenses, to be treated as juvenile petty offenses.

The CCSC recommends a legislative enactment rather than a change in the Juvenile Court Rules because rules of court may not modify statutes relating to substantive law.[39] Since the proposed process would create a different classification of offense with different potential penalties, certification in this context must be considered a matter of substantive law requiring legislative action. Implementation of the recommendation would, however, require deletion of Rule 19.05 of the Minnesota Rules of Juvenile Procedure which provides, among other things, that no delinquency petition may be amended to a petty offense petition. The proposed procedure, by providing a clear limitation on the dispositions which may be imposed, will encourage the expeditious settlement of cases and thereby contribute to the goal of judicial economy.

Findings

2.2A Predictability of outcomes and the expeditious handling of cases are crucial factors in juvenile justice, and

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[39]*State v. Batzer*, 448 N.W.2d 565 (Minn. App. 1989).

both can be increased by reducing the range of dispositions available.

2.2B Reducing the range of dispositions can be accomplished without sacrificing the discretion necessary to address the best interests of the child by permitting certification of delinquency offenses as petty offenses.

Recommendations

2.2A The Minnesota Juvenile Court Act should be amended to add a section providing that an alleged delinquency offense shall be treated as a juvenile petty offense if the county attorney believes that it is in the best interest of the child to do so and certifies that belief to the juvenile court at or before the arraignment or adjudicatory hearing upon the petition, and the court approves the certification motion.

2.2B Section 260.015, subdivision 21, of the Minnesota Statutes should be amended to add to the definition of juvenile petty offense a violation of state or local law which has been certified as a petty offense in accordance with the designated provisions of law.

2.2C Rule 19.05 of the Minnesota Rules of Juvenile Procedure should be amended to delete the provision providing that no delinquency petition may be amended to a petty petition.

Settlement Negotiations

Rule 22.05 of the Minnesota Rules of Juvenile Procedure provides that settlement agreements shall not include recommendations as to disposition unless permitted by court rule. This rule impedes the expeditious settlement of delinquency cases because it prevents any assurance to juvenile defendants regarding their greatest concern: "What will happen to me if I admit the charge?" No compelling reason exists to preclude recommendations as to the disposition of juvenile cases. Such agreements do not infringe on the court's discretion because the agreements are

subject to court approval. The court can reject disposition agreements if they are not in the interest of justice or not in the best interest of the child. Given the broad discretion afforded to the juvenile court in determining the disposition of delinquency cases, and the broad range of dispositions authorized by statute, settlement agreements should include recommendations as to the disposition. Therefore the CCSC recommends that Rule 22.05 be abolished.

Finding

2.3 Rule 22.05 of the Minnesota Rules of Juvenile Procedure, which precludes disposition recommendations as part of settlement agreements, impedes the expeditious settlement of juvenile cases because that rule prevents any assurance to a juvenile defendant regarding the outcome of the case, and there does not appear to be any compelling reason to preclude such recommendations.

Recommendation

2.3 Rule 22.05 of the Minnesota Rules of Juvenile Procedure, which provides that settlement agreements shall not include recommendations as to disposition, should be abolished.

Use of Referees

The issue of the legitimacy of using referees instead of judges arises because referees are appointed, not elected. Historians argue that the reason the constitution requires election of judges is to justify the exercise of broad judicial discretion.[40]

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[40]Stuart, *Judicial Powers of Non-Judges: The Legitimacy of Referee Functions in Minnesota Courts,* 6 Wm. Mitchell L. Rev. 65, 124-129 (1980) (noting also that the low rate of appeals of referee decisions appears to exhibit a high degree of satisfaction with referee decisions).

Therefore delegation of such broad discretion to a judicial official, *i.e.*, a referee, who is not elected, is not appropriate if the juvenile objects. In view of the limited range of sanctions available for "juvenile petty offenses" as recommended in this report, little discretion is left, and retaining the right to object to the assignment of a referee in such cases is unnecessary.

The right of the juvenile to insist upon a judge clearly inhibits more efficient use of referees by the juvenile court. Accordingly, the CCSC recommends that juvenile court rules be amended to eliminate the right to object to the assignment of a referee in proceedings concerning juvenile petty offenses. This recommendation, if adopted, would not affect the right of the juveniles or their parents to demand a hearing before a judge of the juvenile court to review the findings and recommendations of the referee, nor would it affect the right of a juvenile to object to the assignment of a particular referee, *e.g.*, for bias.[41]

Finding

2.4 The use of referees in less serious juvenile cases is an effective means of furthering the goal of judicial economy. In view of the limited sanctions provided for juvenile petty offenses, the right to object to the assignment of a referee is not necessary in those cases and should not be retained.

Recommendation

2.4 Rule 2.02 of the Minnesota Rules of Juvenile Procedure should be amended to eliminate the right of the child's

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[41]Minn. Stat. § 260.031(4) (1988); Minn.R.Juv.Proc. 2.04 (review of referees findings and proposed orders). Minn. Stat. §§ 542.16, 487.40 (1988); Minn.R.Civ.P. 63.02; 63.03 (removal of judges and referees by notice or by affidavit alleging bias or other cause).

counsel or the county attorney to object to a referee presiding at a hearing in proceedings concerning juvenile petty offenses.

CHAPTER 3

MENTAL COMPETENCY AND COMMITMENT

Introduction

Civil commitment procedures under the Minnesota Commitment Act of 1982[42] are already perhaps the most efficient court procedures in Minnesota. A preliminary hearing must be held within seventy-two hours of the time the respondent is placed on a court-ordered hold, excluding Saturdays, Sundays, and legal holidays.[43] The full commitment trial must be held within fourteen days of the filing of the petition for commitment,[44] although the practice in Hennepin County is to hold the trial within three business days after the preliminary hearing. Such stringent time constraints make it extremely difficult for respondents and their counsel to adequately prepare for trial, and make it less likely that the respondents will make substantial progress toward recovery in the time between the preliminary hearing and the trial.

Considering that the respondents can lose their liberty initially for up to six months, and thereafter sometimes longer, in a commitment proceeding, the present procedures could hardly be

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[42]Minn. Stat. ch. 253B (1990).

[43]Minn. Stat. § 253B.07, subd. 7 (1990)

[44]Minn. Stat. § 253B.08, subd. 1 (1990)

any more "efficient." Due process dictates that commitment defense counsel have more time to fully explore possible defenses to commitment, including a search for available alternatives to involuntary commitment to inpatient hospitalization. The lack of less restrictive community treatment facilities and programs makes commitment an all too likely result, even if the respondent would be capable of treatment in such a less restrictive program.

The argument against more efficiency is bolstered by the consideration that even in the most petty of criminal cases, including petty misdemeanors for which the only penalty is a fine, the criminal court defendant is afforded much greater time to prepare.

Criminal misdemeanor cases can continue for months before trial, and then the defendant is afforded the right to a jury trial, a right not available at a commitment proceeding. Even the longest sentence imposed for a misdemeanor, ninety days, is usually far shorter than the minimum time a commitment respondent spends at the state hospital after a typical commitment order. And, while the incarcerated criminal is only deprived of liberty, the committed respondent's body may be invaded by powerful and potentially dangerous antipsychotic drugs.

All people accused of a crime or petitioned as in need of treatment because of mental illness, chemical dependency, or mental retardation, are entitled to the strictest procedural protections before they are deprived of their liberty or forcibly medicated, or both. However, under the guise of helping the commitment

respondent by treatment, fundamental rights afforded the most petty criminal defendant are denied to the commitment respondent, most notably the right to trial by jury and adequate time in which to prepare a defense.

Nevertheless, in a limited number of areas the present commitment procedures could be made more efficient without substantially prejudicing the rights of respondents, and in fact enhancing their right to receive effective treatment at an earlier date. Two areas that particularly stand out are the reinstatement of the dispositional option of the conditional continuance, without the judicial finding of commitability, and the determination of medication issues at the same time that other commitment issues are determined at trial.

Conditional Continuances

A commitment case can be disposed of in several ways: dismissal, conditional continuance, release before commitment (stayed commitment), and outright commitment.

The analogies to criminal procedure are dismissal, continuance for dismissal with conditions, conviction with stay of imposition or execution, and conviction with imposition and execution of sentence. Conditional continuances for dismissal and stays of imposition or execution are common devices to dispose of the thousands of criminal cases each year, and everyone agrees that all cases cannot and should not be tried.

Likewise in the mental health court, settlements should be encouraged; in fact, even more so than in criminal court, since the objectives of punishment and deterrence are not present.

After a commitment petition is brought, respondents, if they have been candidly advised of the likelihood of commitment by their counsel, are often willing to voluntarily seek monitored treatment under threat of possible commitment, but are often reluctant to admit the petition (i.e. that they are in need of involuntary commitment) and accept a stayed order of commitment. Without such an admission, the respondent preserves the right to litigate commitability at a later date in the event of failure to fulfill the necessary conditions for the continuance. While this would result in as much or more total litigation in those cases when the respondent fails to meet conditions and is brought back to court for trial, in a substantial number of cases the respondents will fulfill the conditions, accept and complete voluntary treatment, and eventually have their petitions dismissed.

At the present time, conditional continuances cannot extend beyond fourteen days, with an additional thirty day extension by court order. This time period is too short; often, it cannot be determined whether treatment is successful within that time.

The practical result of the absence of the longer term conditional continuance as a dispositional tool is that more cases are tried when a settlement could otherwise have been reached without a trial.

The present statute governing stayed commitments (called "release before commitment") is section 253B.095 of the Minnesota Statutes. Safeguards for monitoring the respondent are specifically set forth. No reason can be found why the same safeguards could not be applied to conditional continuances.

Hennepin County made frequent use of the dispositional option of the conditional continuance prior to the legislature's amendment of the statute to limit this option to fourteen days, effective January 1, 1989. Unlike other counties, which apparently did not always adequately specify the conditions for the continuance or provide a system to monitor compliance, Hennepin County used the procedures now mandated for the current stayed commitment set forth in section 253B.095.

Significantly, the actual voluntary treatment for the respondent is exactly the same whether under a conditional continuance or stayed commitment order. Under a conditional continuance, the respondent is closely monitored by a social worker to ensure compliance with the conditions of the continuance, and the conditions are made clear by a written document signed by the respondent. The only differences between a conditional continuance and a stayed commitment are: 1) if respondents fail in treatment and are brought back into court, there must then be a trial to determine whether they are committable, whereas if they are on a stayed commitment, the petitioner need only show that the respondent has failed the terms of the stay; and 2) the respondents will never have been adjudicated as committed people, assuming

compliance with the terms of the conditional continuance, whereas under the stayed commitment respondents will have been so adjudicated.

This last factor's importance, often referred to as "having a commitment on your record," is not sufficiently considered in a substantial number of cases. Many respondents may be more concerned about having been adjudicated a committed person than any other consequence of the commitment proceeding, including the loss of liberty and the forced administration of medications. These are temporary injuries, whereas the adjudication itself will have far greater long-term ramifications.

Furthermore, the demand by the petitioners for an immediate adjudication may in many instances be more for the convenience of the petitioners and the witnesses than for the benefit of the respondent. Arguably, adults disabled even temporarily by mental illness, mental retardation, or chemical dependency should be viewed as deserving of, and entitled to, the same efforts at treatment and rehabilitation that juveniles receive in the juvenile court. The receipt of short term treatment after commitment, at the cost of the life-long stigma of having a commitment "on their record," is a dubious benefit.

Therefore, in the interests of both efficiency and due process, the conditional continuance should be reinstituted as a dispositional option and its use encouraged.[45]

Finding

3.1 Excessive litigation is caused by the lack of the long-term conditional continuance as a dispositional tool.

Recommendation

3.1 Section 253B.095 of the Minnesota Statutes should be amended so as to allow conditional continuances for up to one year, unless the court finds reason to dismiss the petition.

Jarvis Trials

The primary purpose of the commitment statute is the effective treatment of the respondents if they are deemed to be in need of such treatment and meet the statutory requirements of mental illness or chemical dependency, and dangerousness. However, because of the special requirement that a hearing be held prior to the forced administration of antipsychotic medication, [46] often the respondents are committed to hospitals for weeks or months prior to the holding of a *Jarvis* hearing. Respondents are not only deprived of effective treatment during that time, but also actually often further deteriorate, requiring more massive medical

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[45] One point to be made in statistical tabulations of how long cases take to dispose of is that, to most people involved in commitment cases a conditional continuance is, for all practical purposes, a "final" determination.

[46] *Jarvis v. Levine*, 418 N.W.2d 139 (Minn. 1989)

intervention than would otherwise have been necessary if they had been effectively treated immediately after their commitment.

However, in most cases, despite overwhelming objective evidence of the need for effective treatment, *i.e.*, medications, the need for such treatment is not at all apparent to the respondents themselves. Lack of insight into their own mental condition is a distinctive characteristic of committed respondents. Consequently, committed mentally ill persons may not consent to treatment with medications, despite the wishes of their treating physicians, and in spite of the evidence that medications are usually an essential component of effective treatment for certain types of mental illness.

Prior to the *Jarvis* ruling, the decision to medicate committed respondents against their will was, within limits, within the discretion of the treating medical personnel; committed people did not have the right to refuse treatment for the mental illness for which they were committed, except in the case of electroshock therapy or psychosurgery, two treatments deemed "intrusive." *Jarvis* held that medications likewise were intrusive, and that the Minnesota constitutional right to privacy required that the court approve forced medications prior to their administration, except in narrow emergency situations.

The *Jarvis* decision almost immediately caused a flood of new litigation and currently causes hundreds of hearings every year. After the initial commitment hearing was held, and the respondent committed, another separate hearing had to be held weeks, sometimes

months later. Although the *Jarvis* decision itself seemed to imply that such hearings would not be burdensome on the trial courts, and that the hearings could indeed be held in conjunction with the initial commitment trial, in practice such dual trials are a rare occurrence.

The reasons are five-fold: First, a respondent coming into the court system for the first time has no treatment history, and it is logically difficult to say, to the standard of clear and convincing evidence, that there are no effective alternative treatments to medications. The respondent may have been misdiagnosed, for example, and not require medications.

Second, even if the respondent does have a treatment history, in the short time the petitioner must prepare and prosecute the commitment petition, it is sometimes difficult or impossible to gather and present the necessary documents and records outlining the respondent's treatment history, including the medications that have been effective in the past and the side effects, if any. Additional time to prepare would be needed, but the present statute requires the rapid disposition of cases within extremely stringent time periods.

Third, and perhaps most important, it is not immediately known at the time of the commitment trial just who will actually be the respondent's treating physician. Usually, it will be a staff physician at one of the Regional Treatment Centers, once the respondent is committed and admitted to the center. Hence, the treating physician who will be deciding what particular medication

will be tried, and in what dose, and who will be administering the medications to the respondent, is not available at the trial. *Jarvis*, and subsequent appellate cases, have held that a mere general generic medication order does not meet the *Jarvis* criteria: specific medications in specific maximum dosages must be approved by the court's order.

Fourth, physicians at the holding facilities are often unavailable for the trial. They have a heavy schedule of treating patients at their hospitals and cannot spend a great deal of time in court testifying as to the preferred treatment of the respondent, especially when they themselves will not be doing the treatment. This problem could be partially alleviated by the use of remote audio-video equipment allowing the respondent's treating or diagnosing physician to testify via closed circuit television, relieving the physician of the needs to physically travel to the court. This is currently being tested in the Fourth Judicial District.[47]

Fifth, the County Attorneys who must prosecute the initial commitment trials often do not have the resources to prepare and litigate the additional technical issues of a *Jarvis* hearing. At the present time the Attorney General, representing the Regional Treatment enters, has undertaken to prosecute the *Jarvis* hearings

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[47]Order of the Supreme Court, Interactive Audio-Video Communications Experiment in Fourth Judicial District Mental Health Division Price and Jarvis Proceedings, C6-90-649, March 22, 1990; Order of the Supreme Court, Interactive Audio-Video Communications Project Extension, C6-90-649, September 13, 1990.

which in most cases are held weeks or months subsequent to the commitment.

Because a guardian ad litem is necessary whenever a *Jarvis* determination is made, the court should immediately appoint one whenever *Jarvis* issues are to be addressed at the initial trial. This could be, but is not always, done at the same time the respondent's defense attorney is appointed.

The prepetition screening unit of each county should also determine, as part of its investigation, the recommended treatment for the proposed respondent from the doctor who does the preliminary examination under section 253B.07, subdivision 2 of the Minnesota Statutes, and if medications are recommended as essential to treatment, sufficient information should be included in the prepetition screening report.

Finding

3.2 Delay in providing effective treatment to committed persons as a result of failing to hold a *Jarvis* medications hearing at an early date often requires needless additional court hearings, not to mention needless additional suffering of the untreated committed person.

Recommendations

3.2 A The *Jarvis* determination should be made at the initial trial where the respondent has a treatment history involving major psychotropic medications.

1) Court-appointed examiners should inquire into all relevant *Jarvis* medication issues, including competency with regard to medication decisions, at the initial commitment proceedings.
2) A guardian ad litem should be appointed immediately in cases in which it appears that the proposed patient has a history of treatment with medications, in order to facilitate a *Jarvis* hearing at the time of the initial commitment order.

3) Additional funds should be appropriated to allow the county attorney and the Prepetition Screening Program to prepare sufficient *Jarvis* information to allow the court to make an informed decision at the initial commitment hearing, if appropriate.

B Use of remote audio-video closed-circuit television equipment should be utilized to allow treating physicians to testify without having to travel to the court.

APPENDIX

Summary of
1989 and 1990 Amendments to
Rules of Criminal Procedure
Which May Affect Case Processing Speed

Rule 2.01. Complaints, affidavits, or testimony may be taken under oath via telephone, video equipment, or similar device. ['89].

Rule 2.03. Word processor produced complaints which comply with the forms supplied by the State Court Administrator and are approved by Information Systems Office may be used. ['89].

Rule 3.03. Warrants may be executed on Sunday or in the evening not only when exigent circumstances exist but also when the person named in the warrant is found on a public highway or street. ['89].

Rule 4.02. Tab charges may be used for gross misdemeanors DWIs charged under sections 169.121 and 169.129 of the Minnesota Statutes. Complaints may still be requested, and if such a request is made, the appearance under Rule 5 shall be continued. Comments to Rule 4 indicate that tab charges were extended to gross misdemeanor DWIs because of concern that such proceedings will not otherwise be prosecuted and completed promptly. ['89].

Rule 5.04. Defendant may request permission to plead guilty to offenses from other jurisdictions in the state; procedures set out in Rule 15.10 are to be followed. ['89].

Rule 6, Comments. Trial may be postponed for good cause, not including court calendar congestion. ['89].

Rule 8.04. Requires omnibus hearing to be held within 28 days after the Rule 8 hearing. Advisory Committee report notes that increasing the time from 14 to 28 days obviates the need for the 30-day continuance provision in Rule 11.07 and avoids the unnecessary compression of time limits when the Rule 5 and Rule 8 appearances are consolidated. ['90]. The time for the omnibus hearing may be extended for good cause related to the particular case only, upon motion of the prosecuting attorney, the defendant, or on the court's own initiative. ['89].

Rule 9.01. The prosecutor is to allow access at any reasonable time to all matters within the prosecuting attorney's possession or control which relate to the case, including names and addresses of persons having information related to the case, any statements which relate to the case, along with grand jury minutes or transcripts, law enforcement officer reports, and those reports on prospective jurors which are not work product. The Comments to Rule 9 state that these new provisions establish an "open file" policy. ['89].

Rule 11, Comment. Explains that early resolution of motions and firm trial dates are important factors in minimizing delays and that achieving these requires the cooperation of the court, the local bar, and law enforcement. ['90].

Rule 11.04. Expressly permits pretrial dispositional conferences as part of omnibus hearing. Comments encourage use of dispositional conferences, noting that many districts already make widespread use of them to resolve cases at the earliest possible time and to facilitate further scheduling. Comments also emphasize that effectiveness of dispositional conferences requires timely completion of discovery under Rule 9.01. ['90].

Rule 11.07. Omnibus hearings may continued only for good cause related to the particular case. Comments indicate that, at any dispositional conference segment of the omnibus hearing, it is permissible to continue the evidence suppression portion until the day of trial if the court determines that resolution of the evidentiary issues would not dispose of the case. ['90]. All issues presented at the Omnibus hearing shall be determined within 30 days after the Rule 8 appearance unless a later determination is required for good cause related to the particular case. ['89].

Rule 11.10. If trial is not commenced within 120 days from the date of a demand for trial, the defendant shall be released, subject to such nonmonetary release conditions as the court may establish, unless exigent circumstances exist. ['89].

Rule 15.10. New rule allowing defendants to plead guilty to any other offense committed within the state, after either a plea, a finding, or a verdict of guilty. The offense must be charged, and the plea approved, by the prosecuting attorney having authority to charge the offense. Fines collected are remitted to the administrator of the court which originally had jurisdiction over the offense, and then disbursed as required by law for similar fines. ['89].

Rule 19.04. Time for an omnibus hearing may be extended only upon good cause related to the particular case. ['89].

Rule 23, Comments. Advisory committee indicates that the Rules do not allow reduction of a misdemeanor to a petty misdemeanor without the consent of the defendant, and that the rules take precedence over section 609.131 of the Minnesota Statutes, which provides to the contrary. *But cf. State v. Batzer,* 448 N.W.2d 565 (Minn. App. 1989) (section 609.131 is substantive and therefore supercedes Rule 23.04). ['89].

Rule 26.01. A case may be submitted to the court based on stipulated facts, after the defendant waives the rights to testify,

to have the prosecution witnesses testify and be questioned, and to have defense witnesses testify. ['89].

Rule 26.03, subd. 13. Follows Rule 63.03 of the Rules of Civil Procedure and provides that a notice to remove must be served and filed within 7 days after a party receives notice of which judge is to preside at the trial or hearing. Advisory committee comments indicate that this Rule supercedes section 542.16 of the Minnesota Statutes, which permitted the notice to be filed up to two days prior to the trial or hearing and caused scheduling difficulty for court administrators. Rule also codifies the practice that the notice is inapplicable against a judge who has already presided at trial, the Omnibus Hearing, or other evidentiary hearing of which the party had notice. ['89].

Rule. 27.05. A new rule allowing for suspension of prosecution for a specified time, after which it will be dismissed as long as defendant commits no new offenses and abides by any additional conditions set by the court. These agreements may be made after due consideration of the victim's views and are subject to court approval. ['89].

Rule 28.04. The prosecution's 5-day time limit for appeal from pretrial orders does not begin to run until notice of entry of an appealable pretrial order has been served on or given to the prosecuting attorney. Comments explain that, under the previous rule, it was possible for the short time limit to expire before the prosecutor received actual notice of entry of the order. ['90].

Rule 33.05. Facsimile transmissions may be used for sending all documents authorizing interception of communications, as well as for arrest and search warrants. ['89].

Criminal Case Processing Statistics[1]

Felony - 90% Time Objective
Percent Disposed by Four Months

District	1985	1986	1987	1988	1989
First	62%	66%	66%	65%	67%
Second	46%	50%	61%	47%	41%
Third	53%	55%	56%	58%	51%
Fourth	69%	69%	60%	59%	67%
Fifth	72%	69%	68%	73%	69%
Sixth	84%	80%	79%	70%	72%
Seventh	62%	61%	67%	72%	65%
Eighth	75%	79%	70%	71%	65%
Ninth	73%	76%	70%	75%	70%
Tenth	60%	64%	61%	63%	55%
Statewide	64%	65%	64%	63%	61%

Felony - 97% Time Objective
Percent Disposed by Six Months

District	1985	1986	1987	1988	1989
First	80%	84%	85%	84%	86%
Second	92%	90%	91%	83%	78%
Third	71%	72%	75%	80%	75%
Fourth	85%	85%	78%	77%	81%
Fifth	84%	84%	82%	87%	83%
Sixth	94%	91%	91%	88%	87%
Seventh	82%	81%	87%	89%	87%
Eighth	87%	90%	87%	85%	83%
Ninth	86%	87%	85%	88%	85%
Tenth	81%	84%	83%	84%	82%
Statewide	85%	85%	83%	83%	82%

[1]Measured from first appearance to disposition.

Felony - 99% Time Objective
Percent Disposed by Twelve Months

District	1985	1986	1987	1988	1989
First	95%	97%	98%	98%	98%
Second	98%	98%	99%	98%	98%
Third	96%	93%	94%	96%	97%
Fourth	97%	97%	96%	95%	95%
Fifth	96%	97%	98%	99%	98%
Sixth	99%	99%	99%	98%	96%
Seventh	95%	98%	98%	99%	99%
Eighth	98%	98%	97%	96%	98%
Ninth	98%	98%	96%	99%	98%
Tenth	98%	98%	98%	98%	98%
Statewide	97%	97%	97%	97%	97%

Gross Misdemeanor - 90% Time Objective
Percent Disposed by Four Months

District	1985	1986	1987	1988	1989
First	78%	77%	79%	82%	82%
Second	71%	70%	74%	70%	72%
Third	76%	75%	74%	74%	77%
Fourth	76%	83%	85%	88%	83%
Fifth	84%	88%	81%	80%	77%
Sixth	75%	67%	67%	74%	83%
Seventh	80%	82%	88%	86%	82%
Eighth	83%	88%	81%	80%	76%
Ninth	79%	79%	83%	86%	84%
Tenth	85%	86%	80%	80%	78%
Statewide	79%	80%	81%	81%	80%

Gross Misdemeanor - 97% Time Objective
Percent Disposed by Six Months

District	1985	1986	1987	1988	1989
First	90%	86%	90%	92%	92%
Second	86%	84%	89%	86%	88%
Third	86%	86%	86%	87%	90%
Fourth	90%	93%	94%	95%	93%
Fifth	93%	97%	93%	92%	91%
Sixth	86%	78%	80%	85%	95%
Seventh	91%	91%	96%	96%	95%
Eighth	92%	94%	92%	91%	91%
Ninth	90%	90%	92%	94%	94%
Tenth	95%	95%	94%	93%	93%
Statewide	90%	90%	92%	92%	92%

Gross Misdemeanor - 99% Time Objective
Percent Disposed by Twelve Months

District	1985	1986	1987	1988	1989
First	98%	98%	98%	99%	99%
Second	97%	97%	99%	98%	98%
Third	97%	96%	97%	97%	98%
Fourth	98%	98%	99%	99%	98%
Fifth	99%	99%	98%	99%	99%
Sixth	98%	99%	99%	98%	99%
Seventh	98%	98%	99%	99%	99%
Eighth	99%	100%	98%	99%	99%
Ninth	98%	98%	99%	99%	99%
Tenth	99%	99%	99%	99%	99%
Statewide	98%	98%	99%	99%	99%

Cases Disposed by Trial in Minnesota Trial Courts
1988
(Percent of Cases Disposed)

District	Felony		Gross Misdemeanor	
	% Disposed by Trial	N of Cases	% Disposed by Trial	N of Cases
First	5.0	1,216	0.9	1,523
Second	8.2	1,610	2.5	1,262
Third	5.8	927	2.6	1,057
Fourth	5.6	4,098	0.9	3,635
Fifth	7.0	598	4.6	717
Sixth	7.1	721	5.5	652
Seventh	3.1	1,327	2.7	1,362
Eighth	4.5	332	3.3	334
Ninth	4.7	1,222	3.3	792
Tenth	4.7	1,600	2.2	2,127
State	5.6	13,651	2.2	13,461

CCSC PUBLIC HEARINGS
Dates, Locations, and Witnesses

TUESDAY, APRIL 17, 1990
RAMSEY COUNTY COURTHOUSE, ST. PAUL

The Honorable Joanne Smith, Chief Judge, Second Judicial District
The Honorable David Doyscher, Judge, Tenth Judicial District
Colia Ceisel, Assistant Ramsey County Public Defender
James Konen, Ramsey County Attorney's Office
Frank Wood, Warden, Minnesota Correction Facility - Oak Park Heights
Fran Sepler, Crime Victim's Ombudsman
Bob Hansen, Ramsey County Probation Officer, Adult Division
Debra Dailey, Director, Sentencing Guidelines Commission
Robert Molstad, Washington County Attorney
Ed Cleary, Ramsey County Public Defender, Juvenile Division
Gary Schurrer, Private Defense Attorney

WEDNESDAY, APRIL 18, 1990
HENNEPIN COUNTY GOVERNMENT CENTER, MINNEAPOLIS

Judy Johnston, Hennepin County Attorney's Office
Steve Tallon, Holmes & Graven, Contract City Attorney
Mike Walz, Hennepin County Attorney's Office (Juvenile Division)
Sig Fine, Corrections
The Honorable Kevin Burke, Assistant Chief Judge, Fourth Judicial District
Don Davis, Chief of Police, Brooklyn Park Police Department
Captain Bob Bloedow, Hennepin County Sheriff's Department, Warrant Division
Pat Peterson, Department of Corrections, Victim Services
The Honorable Harry Seymour Crump, Judge, Fourth Judicial District, Mental Health Division
Steve Pihlaja, Private Defense Attorney
John Stuart, State Public Defender
Roger Battreall, Minneapolis City Attorney's Office
John Manning, Minneapolis City Attorney's Office
David Knutson, First Assistant Hennepin County Public Defender

WEDNESDAY, APRIL 25, 1990
STEARNS COUNTY COURTHOUSE, ST. CLOUD

Gregory Solien, Seventh Judicial District Administrator
The Honorable Bernard Boland, Judge, Seventh Judicial District
John Ellenbecker, Public Defender
Kathy Tracey, Assistant St. Cloud City Attorney
Jan Petersen, St. Cloud City Attorney
John Moosbrugger, Public Defender
The Honorable Spencer Sokolowski, Judge, Tenth Judicial District
Jerry Soma, Anoka County Community Corrections
Steve Holmquist, Stearns County Court Services
Kim Pennington, Commitment Attorney

THURSDAY, MAY 17, 1990
OLMSTED COUNTY COURTHOUSE, ROCHESTER

The Honorable Gerard Ring, Judge, Third Judicial District, Rochester
Don Cullen, Third Judicial District Administrator
The Honorable Lawrence Collins, Chief Judge, Third Judicial District, Winona
Richard Smith, Contract Public Defender
Ray Schmitz, Olmstead County Attorney
Bill Siggelkow, Dodge - Olmstead - Filmore Community Corrections Court Delay Study Group
Fred Suhler, Rochester City Attorney's Office
Kevin Riha, Public Defender, Waseca
Donna Dunn, Victim Services
Ms. Carole Zebaugh, M.A.D.D., Olmsted County

WEDNESDAY, MAY 23, 1990
LYON COUNTY COURTHOUSE, MARSHALL

Cecil Naatz, Fifth District Public Defender
Hugh Nierengarten, Contract City Attorney
Brian Murphy, Contract City Attorney
The Honorable George Harrelson, Judge, Fifth Judicial District
Chuck MacLean, Lyon County Attorney
Dick Fasnacht, Fifth Judicial District Administrator
The Honorable George Marshall, Chief Judge, Fifth Judicial District
The Honorable David Peterson, Judge, Fifth Judicial District

THURSDAY, JUNE 14, 1990
BELTRAMI COUNTY COURTHOUSE, BEMIDJI

Randy Burg, Juvenile, Commitment, and Misdemeanor Defense Attorney
Paul Kief, Ninth Judicial District Public Defender
Tim Faver, Beltrami County Attorney
Tom Smith, Defense Attorney
Dee J. Hanson, Ninth Judicial District Administrator
The Honorable Russell Anderson, Judge, Ninth Judicial District
The Honorable John Roue, Judge, Ninth Judicial District

THURSDAY, JUNE 28, 1990
ST. LOUIS COUNTY COURTHOUSE, DULUTH

Mark Starr, Assistant St Louis County Attorney, Juvenile Division
Eli Miletich, Chief of Police, Duluth Police Department
The Honorable Dale Wolf, Judge, Sixth Judicial District
The Honorable John Oswald, Chief Judge, Sixth Judicial District
Stephen Rathke, Crow Wing County Attorney
The Honorable Jack Litman, Judge, Sixth Judicial District
John Fillenworth, Juvenile and Commitment Public Defender
Paul Gustad, St. Louis County Victim Witness Program
Gary Waller, Sheriff, St. Louis County
Gary Edinburg, M.A.D.D. Representative
Mary Asmus, Assistant City Attorney, Duluth

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