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Reference of Juveniles to Adult Court

Juvenile justice policymakers, academicians and practitioners have given the topic of juvenile court reference much attention over the years. This policy brief does not attempt or seek to duplicate the existing literature on the subject. Instead, its purpose is to provide a general overview of the adult court reference process in Minnesota and elsewhere, and to summarize and analyze some of the policy issues and options it raises.

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Introduction

Under current Minnesota law, a juvenile who commits a criminal act normally is not tried and punished for the crime within the adult criminal system. Rather, the juvenile usually is under the delinquency jurisdiction of the juvenile court system and subject to its hearing process and dispositions.

The juvenile court system differs from the adult criminal system in many respects.¹ Most of its unique features result from its philosophy of treatment and rehabilitation compared to the adult criminal system's philosophy of punishment and retribution. Specifically, the juvenile court system is a civil process designed to protect the juvenile from the consequences of unlawful conduct, rehabilitate the juvenile, and promote the public safety. In contrast, the adult system is a criminal process designed to protect the public, ascertain criminal responsibility for unlawful behavior and, where appropriate, provide a punishment that is proportional to the gravity of the crime committed.

In most cases, the law presumes that the "rehabilitative ideal" of the juvenile court system should guide society's response to a juvenile's unlawful acts. However, sometimes a more punitive response may be needed, either because of the seriousness of the juvenile's crime or because of the juvenile's apparent unamenability to treatment within the juvenile justice system. For these cases, the law provides a process under which an older juvenile may be "referred for adult prosecution". Once referred, the juvenile may be prosecuted, convicted and sentenced as an adult.

Although states continue to use a variety of approaches to determine whether a juvenile is an appropriate candidate for reference to adult court, the trend around the country appears to be away from broad, unstructured juvenile court decisionmaking and towards explicit and objective legislative standards. In the process, many states, including Minnesota, seem to be rejecting the traditional notion of rehabilitation for older juvenile offenders, at least for serious or chronic offenders, and embracing the idea that serious or chronic juvenile offenders should be punished as adults for their criminal behavior.

This policy brief concludes that if, as it appears, older juveniles are increasingly likely to be held accountable for their criminal behavior as if they were adults and are subjected to adult sanctions, it is important that the juvenile court process by which these juveniles are referred for criminal prosecution is fair and principled. A reference process that relies primarily on objective criteria, such as the nature of the crime, the age of the juvenile, and the extent of prior, adjudicated delinquent conduct, is more likely to result in consistent and principled results than one that relies primarily on the exercise of unstructured discretion by the juvenile court judge. However, it should be recognized that such consistency and objectivity comes at a price: the lessening of the juvenile justice system's ability to consider a particular juvenile offender's individual needs and potential for rehabilitation.

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State reference procedures

State juvenile codes use a variety of processes for referring juveniles for adult prosecution. These processes fall into three groups: judicial waiver systems, legislative waiver systems, and prosecutorial waiver systems. In addition, many states, including Minnesota, have "hybrid" reference procedures which combine aspects of the judicial and legislative waiver systems. This section of the policy brief describes the different waiver approaches adopted by the states and summarizes their policy objectives and implications.

Judicial waiver.

In its purest form, the judicial waiver approach leaves the reference decision totally within the juvenile court judge's discretion. Typically, the judge determines on a case-by-case basis whether a particular juvenile is either unamenable to treatment or a threat to the public safety. The judge's decision is usually guided by the factors listed on page 5.

Proponents of judicial waiver defend it on two grounds. First, they argue that it is consistent with the traditional juvenile justice philosophy of individualized treatment for juveniles and wide discretion for juvenile court judges. Second, they point out that judicial waiver processes have built-in due process safeguards, such as hearings and appellate review of reference orders, which are more protective of the rights of juveniles than other waiver procedures.

Opponents of judicial waiver argue, in contrast, that the highly discretionary nature of judicial waiver results in arbitrary and, possibly, discriminatory outcomes. Because the standards for waiver are so broad, they argue, the waiver decision is highly subjective and, therefore, standardless and unreviewable.²

Legislative waiver.

Under the legislative waiver approach, the juvenile court lacks jurisdiction over certain types of juvenile offenders or offenses. Some states accomplish this result by excluding all juveniles over a certain age from the juvenile justice system. Other states exclude certain types of offenses, both serious and minor, from the jurisdiction of the juvenile court. A third group of states excludes those offenders who commit certain crimes and have a prior record of serious or chronic offenses.³ Regardless of the approach taken, legislative waiver systems represent a rejection of the traditional, rehabilitative and individualized philosophy of the juvenile court in favor of the retributive, offense-oriented values of the criminal system, at least with respect to older juveniles who commit serious or chronic offenses.

Persons who favor legislative waiver argue that judgments on the proper balancing of public safety and rehabilitative concerns should occur openly and within the democratic give-and-take of the legislative branch rather than within the secrecy of the closed juvenile court.⁴ Persons who oppose legislative waiver argue that the primary issue should be what course of action is best for the child, not what action is best for public safety, and that the person best able to make that judgment is the juvenile court judge reviewing the circumstances of a particular case.

Prosecutorial waiver.

A few states⁵ permit the prosecutor to decide whether a particular offender's case should be heard in juvenile court or criminal court. Also known as "concurrent jurisdiction", this approach gives the prosecutor the power to decide which system is most appropriate for a particular juvenile offender.

Proponents of prosecutorial waiver systems argue that this approach permits individualized decisionmaking by persons with experience to decide whether the criminal justice system ought to respond to deviant behavior. Opponents, however, argue that prosecutorial waiver is the least desirable of all waiver systems because it has neither the due process protections of judicial waiver nor the public accountability of legislative waiver.

Hybrid waiver systems.

Increasingly, states are identifying combinations of offense and offender characteristics that require the court to give the juvenile special waiver consideration. For example, reference is presumptively appropriate in Minnesota and Indiana whenever a specified combination of current and past offenses is demonstrated. Delaware requires that a reference hearing be held whenever a juvenile is charged with certain enumerated offenses. California shifts the burden of proving fitness for juvenile court jurisdiction to the juvenile whenever he or she is charged with an enumerated offense. In each of these situations, the court retains the discretion to decide whether to refer the juvenile for criminal prosecution. The court's discretion, however, is curtailed and guided by prior legislative judgments as to which juveniles are the most likely and appropriate candidates for waiver.⁶ In this way, proponents argue, "hybrid waiver" systems combine the best features of judicial and legislative waiver.

Minnesota's adult court reference process

Statutory law.

Under Minnesota statutes⁷, a juvenile who allegedly commits a crime after becoming 14 years old may be referred to adult court for criminal prosecution if:

- (1) the prosecutor files a reference motion with the juvenile court;
- (2) a reference hearing is held; and
- (3) the court finds
 - a. probable cause to believe the juvenile committed the alleged offense; and
 - b. clear and convincing evidence, shown by the prosecutor, that the child is either unamenable to treatment within the juvenile court system, or the public safety is not served by retaining the case in juvenile court.

Additionally, the reference law contains two special provisions for serious or habitual juvenile offenders. First, if the prosecutor shows that the juvenile was previously tried and convicted as an adult for a felony, the judge must refer the juvenile to adult court for prosecution on the present charge. It is not clear from the statute or rules, however, whether a reference hearing is required in such "prior reference" cases.

Second, according to amendments adopted in 1980, a "prima facie" case for reference is established if the juvenile was at least 16 years old at the time of the offense, and if the juvenile is accused of committing:

- (1) first degree murder, or
- (2) an aggravated felony against a person involving particular cruelty or a high degree of sophistication or planning, or
- (3) another felony enumerated in the statute and the juvenile has the type of prior juvenile court record specified in the statute.

Any of these circumstances creates a presumption that the public safety is not served or that the juvenile is unamenable to treatment within the juvenile court system. If a prima facie case is established, the court may issue a reference order without additional proof on either the public safety or treatment issue.

If, however, a prima facie reference case is not established or available, or is rebutted by "significant evidence", the court must determine whether, considering the totality of the circumstances, there is clear and convincing evidence that the juvenile should be referred to adult court. The "totality of circumstances" may include any of the following:

- a. the seriousness of the offense in terms of community protection;
- b. the circumstances surrounding the offense;
- c. whether the offense was committed in an aggressive, violent, premeditated or willful manner;
- d. whether the offense was directed against persons or property, the greater weight being given to person offenses, particularly if personal injury was involved;
- e. the reasonably foreseeable consequences of the act;
- f. the absence of adequate protective and security facilities available to the juvenile treatment system;
- g. the sophistication and maturity of the juvenile;
- h. the record and previous history of the juvenile;
- i. whether the juvenile acted with particular cruelty or disregard for the life or safety of another;
- j. whether the offense involved a high degree of sophistication or planning; and
- k. whether there is sufficient time available before the juvenile reaches the age of 19 to provide appropriate treatment or care.

The judge's decision to refer the juvenile to adult court or to retain jurisdiction over the juvenile in juvenile court must be in writing, and must include findings of fact and conclusions of law in support of the decision. The judge's decision is an appealable order.

Case law.

There have been many appellate court decisions interpreting the provisions of the Minnesota reference law since it was significantly amended in 1980. Interestingly, only one of these cases involved a challenge to a trial court's decision to retain juvenile court jurisdiction over a juvenile;⁸ the rest involved challenges to a trial court's reference order.⁹ One additional case involved a juvenile who, on his own motion, sought to be referred to adult court; however, the Minnesota Supreme Court ruled that only the prosecutor could make a reference motion.¹⁰

In most cases, the issue presented for appellate review was whether there was clear and convincing evidence of a threat to public safety or the juvenile's unamenability to treatment to support the reference order. The appellate courts upheld the trial court's reference order in all but one of these cases.¹¹ Only one case involved a trial court's decision to retain jurisdiction over the juvenile. In that case, the Minnesota Supreme Court overruled the trial court and found clear and convincing evidence that the juvenile could not be treated within the juvenile court system consistent with the needs of public safety.¹²

In the course of deciding these cases, the Minnesota appellate courts have developed the following legal principles to guide reference decisions.

Standard for appellate review. The trial court has broad discretion to determine whether to refer a juvenile for prosecution as an adult, and the appellate court will not reverse the trial court's decision unless it is contrary to the law or based on clearly erroneous findings.¹³

Decision based on the totality of the circumstances. If a prima facie case for reference is not available or established, the court must consider the "totality of the circumstances", as outlined in Rule 32.05, to determine whether clear and convincing evidence exists in support of reference.¹⁴

Expiration of juvenile court jurisdiction. A court's determination that there is not enough time to provide treatment to a juvenile before the juvenile court's jurisdiction ends is a proper basis for concluding that a juvenile is unamenable to treatment. However, the court's decision cannot rest solely on the age of the juvenile but must also rely on other evidence, such as psychological data and the juvenile's past treatment history.¹⁵

Reference based on un rebutted prima facie case. Where the prosecutor establishes an un rebutted prima facie case for reference, the court may order reference without further evidence of dangerousness or unamenability to treatment.¹⁶

Reference based on rebutted prima facie case. Once the prosecutor proves a prima facie reference case, the burden of producing evidence to the contrary shifts to the juvenile. If the juvenile presents substantial evidence in rebuttal, however, the burden of proving a public safety threat or unamenability to treatment by clear and convincing evidence shifts back to the prosecution. The juvenile court must then decide whether the State has met its burden of proof based on the entire record and not by reference to the prima facie case.¹⁷

Policy considerations

Reference processes in general raise many policy issues. This section discusses some of these issues.

Overall sentencing philosophy.

At the outset, policymakers must decide what sentencing philosophy should guide the reference decision. The issue is whether the reference decision should further the sentencing goals of retribution, punishment and deterrence as is usually the case in the adult system or, alternatively, whether it should further the more traditional juvenile court goals of rehabilitation and treatment.

The selection of sentencing philosophy will be made by each jurisdiction differently, depending on its traditions, values and resources. Once a choice has been made, however, the sentencing philosophy should, itself, determine which waiver approach is most desirable. For example, as one expert suggests, if policymakers decide that a punishment philosophy should guide reference decisions, the waiver process should emphasize the seriousness of the current offense and the offender's prior deviant conduct. If, however, policymakers elect to apply the more traditional juvenile justice philosophy of rehabilitation and treatment to the reference decision, the process should emphasize the juvenile's amenability to treatment and likelihood of future dangerousness.¹⁸

Juvenile court discretion.

Policymakers also need to decide how much discretion the juvenile court should exercise when making its reference decision. Should the criteria used by the court be objective and uniform? Or, alternatively, should the court be free to assess each case on its own individual merits and use its own judgment to determine which justice system is most appropriate?

Once again, the answer to these questions depends on the primary philosophy selected to guide reference decisionmaking in that jurisdiction. Where punishment is the primary objective, it would be appropriate to require that the reference decision be made according to objective and uniform criteria, such as the seriousness of the offense or the extent of prior delinquency. Where rehabilitation is the primary objective, it would be appropriate to allow the judge to "individualize" the reference decision and base it on the particular circumstances of the case and the needs of the juvenile.

Public safety concerns.

A third issue confronting policymakers is whether the reference decision should weigh public safety considerations more heavily than treatment considerations, particularly when the present case involves a serious person offense. The response to this issue depends on the extent to which a jurisdiction chooses to tolerate deviant behavior by young people before mandating a more punitive response. This tolerance for deviancy may be influenced primarily by the policy judgment as to when juveniles should be held fully accountable for their criminal behavior. It will also be affected by a number of factors unique to the jurisdiction, including the crime rate, the types of offenses committed, the availability of correctional bedspace and the actual sentencing practices of the adult sentencing courts.¹⁹

Prior record concerns.

Finally, if the reference decision is based primarily on the juvenile's prior juvenile court record, policymakers may want to consider whether procedural safeguards in juvenile court should be enhanced to ensure that prior adjudications are obtained fairly. For example, policymakers may want to require the juvenile court to provide due process protections that are equivalent to those provided in adult criminal court, such as the right to a jury trial in juvenile court (absent in most jurisdictions) and stricter rules governing the waiver of the right to counsel.²⁰

NOTES

1. For a detailed description of the juvenile court system in Minnesota, see Youth and the Law: A Guide for Legislators, Research Department, Minnesota House of Representatives, pp. 51 to 59 (November 1988).
2. See Feld, "The Juvenile Court Meets the Principle of the Offense: Legislative Changes in Judicial Waiver Statutes", 78 J. of Crim. Law & Criminology 471, 491 (1987) (hereinafter cited as "Feld").
3. See Feld at 505-508.
4. Feld at 499.
5. These states are Nebraska, Wyoming, Arkansas and Florida.
6. Feld at 508-509.
7. The reference of juveniles to adult court for criminal prosecution is governed by Minnesota Statutes, section 260.125 and Rule 32 of the Rules for Juvenile Court.
8. Welfare of D.F.B., 433 N.W.2d 79 (Minn. 1988)
9. Welfare of S.E.M., 421 N.W.2d 369 (Minn. Ct. App. 1988); Welfare of R.J.C., 419 N.W.2d 636 (Minn. Ct. App. 1988); Welfare of D.R.D., 415 N.W.2d 419 (Minn. Ct. App. 1987); Welfare of J.A.R., 408 N.W.2d 692 (Minn. Ct. App. 1987); Welfare of R.D.W., 407 N.W.2d 113 (Minn. Ct. App. 1987); Welfare of S.R.L., 400 N.W.2d 382 (Minn. Ct. App. 1987); Welfare of T.R.C., 398 N.W.2d 662 (Minn. Ct. App. 1987); Welfare of T.S.E., 379 N.W.2d 99 (Minn. Ct. App. 1985); Welfare of R.W.B., 376 N.W.2d 263 (Minn. Ct. App. 1985); Welfare of D.M., 373 N.W.2d 845 (Minn. Ct. App. 1985); Welfare of K.J.K., 357 N.W.2d 117 (Minn. Ct. App. 1984); Welfare of Haaland, 346 N.W.2d 190 (Minn. Ct. App. 1984); Welfare of J.R.D., 342 N.W.2d 162 (Minn. Ct. App. 1984); Welfare of J.F.K., 316 N.W.2d 563 (Minn. 1982); Welfare of Givens, 307 N.W.2d 489 (Minn. 1981); Welfare of Jenkins, 304 N.W.2d 632 (Minn. 1981).
10. Welfare of K.A.A., 410 N.W.2d 836 (1987).
11. See Welfare of R.D.W., 407 N.W.2d 113 (Minn. Ct. App. 1987) (reference of juvenile accused of selling two ounces of marijuana not supported by clear and convincing evidence of public safety threat or unamenability to treatment).
12. See Welfare of D.F.B., n. 8 supra.
13. See e.g., Welfare of J.A.R., n. 9 supra, at 694; and compare Welfare of R.D.W., n. 11 supra.
14. See e.g., Welfare of T.R.C. and Welfare of J.F.K., n. 9 supra.
15. Welfare of D.M., n. 9 supra. See also Welfare of R.D.W., n. 11 supra.
16. Welfare of J.F.K. and Welfare of S.R.L., n. 9 supra.
17. Welfare of D.F.B., n. 8 supra; Welfare of S.R.L., n. 9 supra at 384. See also Welfare of T.S.E., n. 9 supra (prima facie finding shifts burden to juvenile to rebut); Welfare of J.R.D., n. 9 supra; Welfare of J.F.K., n. 9 supra (prima facie case rebutted by substantial evidence; however, state met its burden of proving need for reference by clear and convincing evidence); compare Welfare of D.M., n. 9 supra (proof of prima facie case shifts burden to juvenile to prove no public safety threat or amenability to treatment).
18. Feld at 495-496.
19. Feld at 499.
20. While most states afford juveniles the right to counsel in juvenile court, the data shows that the right to counsel is often waived by juveniles. Feld at 529, fn. 210. See also Juvenile Court Cases in Minnesota: An Overview, Research Department, Minnesota House of Representatives (April 1985).