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ACQUISITIONS

THE SERIOUS JUVENILE OFFENDER:

A SUMMARY OF THE ISSUES

EXECUTIVE SUMMARY

This report provides a summary of the issues surrounding statutory revisions or program changes for the serious juvenile offender.

The primary issues addressed in this report are:

- Is there a serious juvenile offender problem in the state of Minnesota?
- Can serious juvenile delinquency be predicted?
- How should the system deal with those juveniles classified as serious offenders?
- What impact would a given solution have on the juvenile or criminal justice system?

Information on the following topics is also examined:

- Statutory provisions in other states regarding the definition of serious juvenile offenders.
- Programs currently available in Minnesota for the serious juvenile offender.

Among the major findings of the research are the following:

- The serious offender group ranges between 100 and 4,000 juveniles depending upon the proposed definition selected, thereby making the extent of the problem contingent upon the serious offender definition selected.
- Depending upon the definition and solution selected, the number of cases filed in adult court could increase up to 40 percent, thereby affecting judicial or correctional resources needed.
- In general, the definitions of serious juvenile offenders proposed so far are not successful at predicting which juveniles will go on to commit additional serious crimes.
- The juveniles most likely to commit repeat serious crimes are the 14 year olds who have a prior felony in their record. However, this prediction rule, while correctly predicting system reinvolvement in 3 out of 4 cases, is subject to error by overpredicting repeat serious offenders.

TABLE OF CONTENTS

	<u>Page</u>
EXECUTIVE SUMMARY	iii
LIST OF TABLES	vii
 <u>Chapter</u>	
I. INTRODUCTION	1
II. ISSUES	3
A. Is There a Serious Juvenile Offender Problem in the State of Minnesota?	3
B. Can Serious Juvenile Delinquency Be Predicted?	7
C. How should the System Deal with Those Juveniles Classified as Violent or Hard Core?	12
D. What Impact Would a Given Solution Have on the Juvenile or Criminal Justice System?	13
III. RECENT LEGISLATION IN OTHER STATES	19
A. California	19
B. New York	21
C. Washington	26
IV. PROGRAMS AVAILABLE IN MINNESOTA FOR THE SERIOUS JUVE- NILE OFFENDER	31
A. Project Katahdin (Location: Minneapolis)	31
B. Harambee (Location: Minneapolis)	31
C. Freeport West (Location: Minneapolis)	32
D. Nexus (Location: Minnetonka)	32
E. Serious Juvenile Offender Program (Sponsor: State, Department of Corrections)	33
 <u>Appendices</u>	
A. SUMMARY OF DATA BASE FOR STUDY OF THE MINNESOTA JUVE- NILE COURT POPULATION	37
B. ESTIMATING PROCEDURES	39
SELECTED BIBLIOGRAPHY	41

LIST OF TABLES

	<u>Page</u>
TABLE 1: Selected Definitions of Serious Juvenile Offenders	4
TABLE 2: Estimated Total Number of Juveniles for Selected Definitions of Serious Juvenile Offenders	5
TABLE 3: Decision Rule Results for 14 Year Olds	8

LIST OF FIGURES

FIGURE 1: Number of Births per Year in Minnesota (for the years 1959 through 1978)	11
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I. INTRODUCTION

During the past few years, practitioners, citizens, and policy makers have become increasingly concerned with the problem of the serious juvenile offender. In response to this growing concern, the Minnesota legislature has introduced numerous bills calling for statutory revisions in the treatment of a legislatively defined group of serious juvenile offenders.

The Crime Control Planning Board believes that before any change is made, the direct and indirect effects and their associated costs to the juvenile or criminal justice system should be examined. This report will provide information relevant to this type of analysis. The report will first deal with the following 4 issues:

1. Is there a serious juvenile offender problem in the state of Minnesota? (Information will be presented on the number of juveniles in Minnesota who would be classified as serious offenders if various definitions are adopted.)
2. Can serious juvenile delinquency be predicted? (Statistical methods will be used to select objectively criteria for classifying juvenile delinquents with the goal of having the best possible prediction of future delinquent behavior.)
3. How should the system deal with those juveniles classified as serious offenders? (A list of the proposed solutions, i.e., changes in the juvenile or criminal justice system will be presented.)
4. What impact would a given solution have on the juvenile or criminal justice system? (One proposed solution will be analyzed to determine its effect on the juvenile or criminal justice system if adopted. The proposed solution is the exclusion of a specific group of persons from the jurisdiction of juvenile court based on age and offense.)

In subsequent sections, the following topics are also examined:

1. Statutory provisions in other states regarding the definition of serious juvenile offenders will be described.
2. Programs currently available in Minnesota for the serious juvenile offender will be described.

Unless otherwise noted the research findings cited in this summary report are from a Crime Control Planning Board's study of the Minnesota juvenile court population.¹ Complete analyses from this study can be found in the following three reports: 1) *A Profile of the Minnesota Juvenile Court Population*, 2) *Serious Juvenile Delinquency in Minnesota*, and 3) *Alternative Definitions of "Violent" or "Hard-core" Juvenile Offenders: Some Empirical and Legal Implications*.

¹A summary of the data base for this study can be found in Appendix A.

II. ISSUES

A. IS THERE A SERIOUS JUVENILE OFFENDER PROBLEM IN THE STATE OF MINNESOTA?

The answer to this question depends totally on how violent or hard-core behavior is defined, and whether the number of juveniles meeting the criterion is considered large enough to be a problem. To date, there have been numerous definitions of violent or hard-core behavior proposed. These definitions vary by the offenses specified as serious, the consideration given a juvenile's prior delinquent career, and the age of the juvenile. In order to illustrate the variety of these definitions, the Crime Control Planning Board's study team selected five definitions of serious juvenile offenders to represent the range of alternatives. Table 1 presents a listing of these definitions. In addition to the various criteria required by each definition, the table provides information on the recommended solution proposed for each definition.

TABLE 1
SELECTED DEFINITIONS OF SERIOUS JUVENILE OFFENDERS

BILL OR PROGRAM	AGE REQUIREMENT (In Years)	OFFENSE(S)	PRIOR RECORD	PROPOSED CHANGE (SOLUTION) TO SYSTEM
<u>Senate File 671:</u> ^a	16 and over	1st degree murder	None	Remove from the jurisdiction of the juvenile court and subject to prosecution as an adult.
		2nd or 3rd degree murder, 1st degree manslaughter, 1st degree criminal sexual conduct, or aggravated assault with great bodily harm	Previous adjudication within 24 months for a felony	
		2nd degree manslaughter, kidnapping, 2nd degree criminal sexual conduct, 1st degree arson, or aggravated assault with dangerous weapon	Previous adjudication within 24 months for 2 separate felonies	
		Felony (not already specified)	Previous adjudication within 24 months for 3 separate felonies	
<u>Senate File 641:</u> ^a	15 and over	Felony	None	Reference for prosecution as an adult
<u>Senate File 693:</u> ^a	15 and over	1st, 2nd, or 3rd degree murder	None	Commit to the Commissioner of Corrections for a determinate term of 3 years
		1st degree manslaughter; aggravated assault; aggravated robbery; kidnapping; false imprisonment; 1st, 2nd, or 3rd degree criminal sexual conduct; 1st degree arson; or burglary ^b	None	Commit to the Commissioner of Corrections for a determinate term of 2 years
<u>Department of Corrections:</u>	15 and over	1st, 2nd, or 3rd degree murder	None	Provide discretionary program within the juvenile justice system
		Aggravated arson, 1st or 2nd degree criminal sexual conduct, 1st or 2nd degree manslaughter, kidnapping, terroristic threats, aggravated assault, or aggravated robbery	Previous adjudication or parole or probation violation within 24 months for a felony	
		Burglary of a residence	Three previous adjudications or parole or probation violations within 24 months for felonies	
<u>House File 388:</u> ^a	14 and over	1st, 2nd, or 3rd degree murder; kidnapping, 1st, 2nd, or 3rd degree criminal sexual conduct; 1st degree manslaughter; aggravated assault; simple robbery; aggravated robbery; or 1st or 2nd degree arson	None	Provide a secure program within the juvenile justice system
		Burglary	2 previous adjudications with 24 months for felonies	
		Theft wherein victim was threatened or physically injured	None	

^a All bills were introduced during the 70th Minnesota Legislative Session.

^b The building entered is a dwelling, and the person possesses a dangerous weapon when entering or while in the building or commits an assault upon a person present therein.

Table 2 gives an estimate of the total number of juveniles falling under each definition. There is a great deal of variability in the number of juveniles that might be classified as violent or hard-core depending on the definition selected. As indicated, the number of juveniles classified as serious offenders can range from 100 to over 4,000. General definitions of serious behavior, such as the commission of a single felony, yield large populations. The population of juveniles classified as violent or hard-core drops significantly when more specific offense or case history information (e.g., type or frequency of felonies) is used.

TABLE 2 ESTIMATED TOTAL NUMBER OF JUVENILES FOR SELECTED DEFINITIONS OF SERIOUS JUVENILE OFFENDERS ^a			
DEFINITION	JUVENILES AFFECTED STATEWIDE		
	ESTIMATING PROCEDURE 1 ^a	ESTIMATING PROCEDURE 2 ^a	n ^b
<u>High Impact on System:</u>			
Senate File 644	4,224 ^c	3,970 ^c	371
<u>Medium Impact on System:</u>			
House File 388	626	506	55
<u>Low Impact on System:</u>			
Senate File 693	250	204	22
Senate File 671	228	182	20
Department of Corrections Program	125	108	11
^a The columns represent two different estimating procedures. For an explanation of the procedures, see Appendix B.			
^b In each category, n is the actual number from the sample who fit the particular category.			
^c This number is based on the number of juveniles who were 15 years and over, and referred to juvenile court for felony charges.			

The number of juveniles classified as serious offenders must be considered when assessing the impact a proposed definition or solution may have on the juvenile or criminal justice system. For example, consider the definition, 15 years and over and charged with a felony, and solution, prosecution in the adult system, contained in Senate File 644. Based upon the estimating procedure the number of people processed by the adult system could increase by almost 4,000. In 1976, there were 8,919 new criminal cases filed in adult court.¹ If this definition and solution had been implemented in that year, the number of cases filed in adult court would have increased by more than 40 percent. This increase would place a considerable strain on the resources of the adult system. To reduce this strain additional resources would have to be made available (e.g., increase the number of trial judges, prosecutors, defenders, and correctional personnel). Also, such a substantial increase in the number of clients in the adult system could create the need for more judicial resources and correctional facilities.²

As illustrated by the above example, the costs of the solution, in most cases, will be directly related to the number of juveniles who are classified as serious offenders. Once the definition and solution are decided upon, an assessment of the available resources should be made to determine if resources are sufficient to accomplish the proposed objective.

¹Supreme Court of Minnesota. *Minnesota State Court Report 1976-77*. (St. Paul, Minnesota, 1978) p. 24.

²It is possible that some juvenile justice personnel could be transferred to the adult system. However, the number of legal professionals required to process a case through the adult system is greater than that of the juvenile system.

B. CAN SERIOUS JUVENILE DELINQUENCY BE PREDICTED?

Although each definition alters the size of the population classified as serious offenders, this in and of itself does not make one definition inherently better than another. The reason is that each definition tested reflects each author's opinion of what constitutes serious behavior. And it is extremely difficult to assess the relative validity of the various proposed definitions.

A major obstacle is the lack of empirical knowledge about serious juvenile behavior. If we could predict behavior with some degree of accuracy, then both the definition and the solution to this problem might be easier. This statement implies that prediction of future delinquency is the desired goal for the definition. If so, our research indicates that the definitions of serious juvenile delinquency proposed so far are not very successful at predicting which juveniles shall go on to commit additional serious crimes and which shall not. Does this lack of success mean that the definitions are poor, or that it is not possible to predict serious delinquent behavior?

Rather than start with any specific definition, statistical methods can be used to select objectively criteria for classifying juvenile delinquents with the goal of having the best possible prediction of future delinquent behavior. To investigate the prediction of future crimes, discriminant analysis was used. This statistical technique tells us:

- 1) which factors in a juvenile's record best predict his future behavior;
- 2) how to construct a decision rule for predicting whether or not a juvenile will recidivate; and
- 3) how accurate the prediction rate will be.

Discriminant analysis gives us the following decision rule which is the best possible for 14-year old delinquents as a whole, and possibly for any age cohort: If a 14 year old has committed one or more felonies, the rule predicts that he will commit a subsequent felony. If he has not committed a felony, the rule predicts that he will not commit one in the follow-up period of 18 months. Overall, this rule predicts correctly 74 percent of the time within the sample. The predictions given by this rule for the sample are represented in Table 3. With the decision rule that includes one prior felony, 23 future felons were predicted correctly but 9 were not. Further, by using such a decision rule, 19 juveniles may be incorrectly labeled future felons.

TABLE 3			
DECISION RULE RESULTS FOR 14 YEAR OLDS ^a			
PREDICTED		ACTUAL	
		Did Not Commit a Felony	Did Commit a Felony
Will not commit a felony:	67	58	9
Will commit a felony:	<u>42</u>	<u>19</u>	<u>23</u>
TOTAL	109	77	32
$\chi^2 = 25.8; p < .001.$			
^a Correctly predicted: 58 + 23 = 81			
Errors: 19 + 9 = 28			
Prediction accuracy: $\frac{81}{109} = 74\%$			

Whether this is a "good" decision rule depends on how much weight is attached to the various kinds of errors. In order to identify 23 future felony delinquents, is it worth the risk of possibly misclassifying 19? Here, as in the case of the proposed definitions, the dangers to the public must be balanced against the rights of the individuals in

regard to how they might be treated as a result of such a classification.

In deciding upon a definition, it is important that the overall purpose of this type of classification be realized. The Crime Control Planning Board's research in the area of serious delinquency prediction provides little assistance in identifying a group of violent or hard-core juvenile offenders. In classifying a group of juveniles as serious offenders, we must be willing to accept the fact that the treatment of these juveniles must be based totally on what the youth has done and not on what he might do in the future.

It has been hypothesized that the increase in juvenile arrests during the mid-1970's was related to the increase in number of births during the mid to late 1950's. Hence, as the number of youths under the age of 18 decrease, the juvenile delinquency problem (i.e., number of juvenile arrests) should decrease. Therefore, a decline in the juvenile population should help in reducing in numbers the problem of the serious juvenile offender. Figure 1 presents information on the number of births in Minnesota for the years 1959-1978. According to the Minnesota Center for Health Statistics, 1959 represented the peak year for the "baby boom" in this state. As demonstrated by the figure, the number of births per year (with the exception of 1968-1970) decreased steadily until 1973. Since 1973, there has been a steady increase in the number of births. This information suggests that there will probably be a decrease in the amount of delinquent activity based on the decreased number of juveniles at risk in this state until the mid to late 1980's. That is in 1976

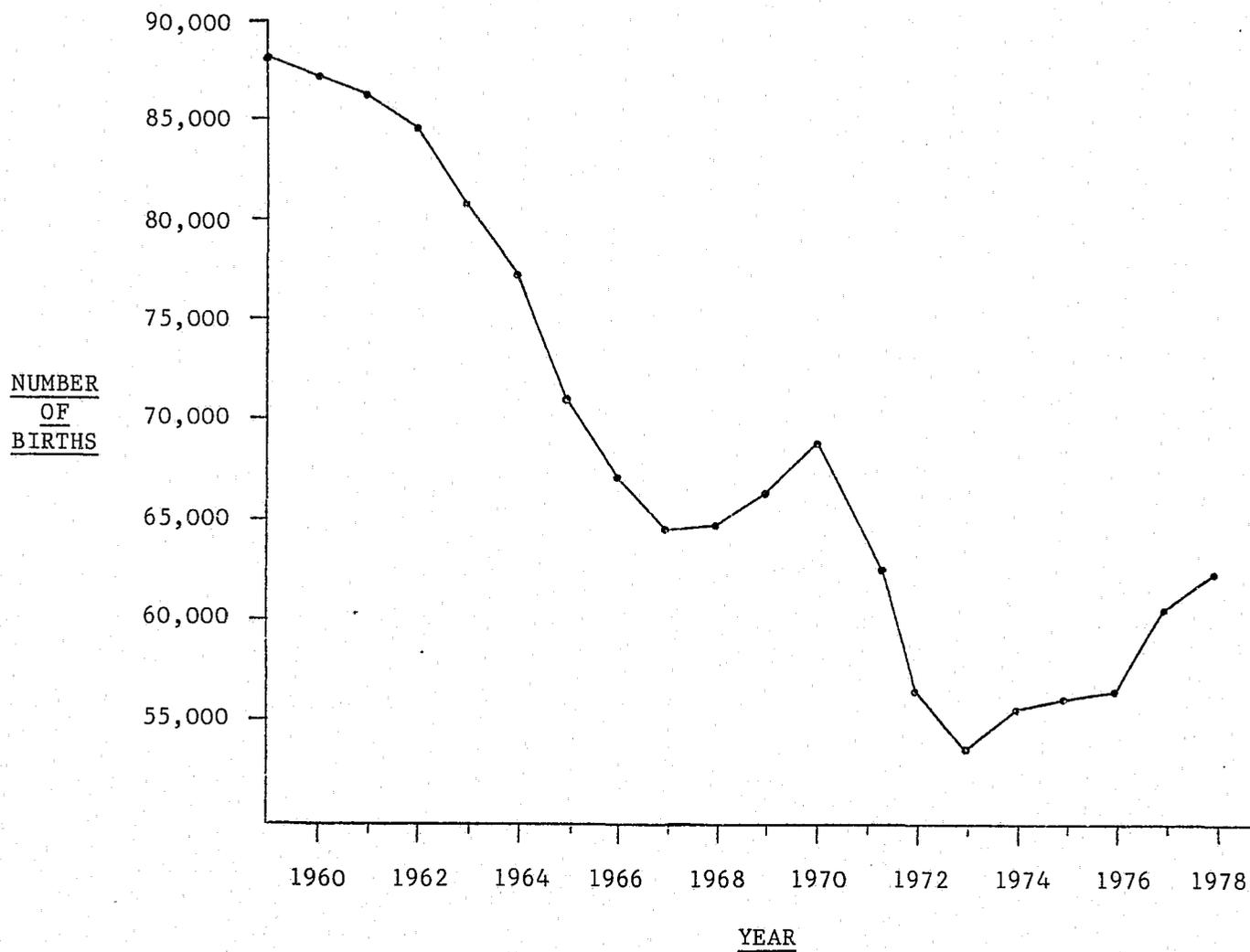
there were approximately 504,094 juveniles¹ between the ages of 12-17 in this state, whereas in 1988 there will be approximately 341,494 juveniles² in the same age group, a reduction of 162,600 juveniles.³ However, an increase in juvenile activity beginning in the late 1980's is expected. Individuals born during the peak years of the above cited "baby boom" are now moving into their reproductive years. Therefore, the number of children born in Minnesota will probably continue to increase over the next several years. And as these children move through life we may be faced with the same social problems that plagued us in the earlier 1970's.

¹This number is obtained by adding the number of births for the years 1959, 1960, 1961, 1962, 1963, and 1964.

²This number is obtained by adding the number of births for the years 1971, 1972, 1973, 1974, 1975, and 1976.

³This number ignores the effects of migration and mortality.

FIGURE 1
NUMBER OF BIRTHS PER YEAR IN MINNESOTA
(for the years 1959 through 1978)



SOURCE: Minnesota Center for Health Statistics.

C. HOW SHOULD THE SYSTEM DEAL WITH THOSE JUVENILES CLASSIFIED AS VIOLENT OR HARD CORE?

Heretofore, the following solutions have been proposed in Minnesota:

1. Provide for the exclusion of a specific group of persons from the jurisdiction of juvenile court based on age and offense;
2. Provide for the mandatory referral of a specific group of juveniles to the adult system;
3. Establish a lower age limit for criminal prosecution of felonies;
4. Provide a mandatory treatment program within the juvenile system;
5. Provide a discretionary treatment program within the juvenile system;
6. Build a long-term secure facility within the juvenile system;
7. Establish within the juvenile system determinate sentences for particular offenses;
8. Revise the current reference statute; or
9. Maintain system as it stands.

Note the differences among solutions 1, 2, and 3. The first solution has been called "automatic certification" but it actually does not include any procedure for referral. It excludes from the definition of juvenile individuals with certain offense and age criteria and subjects them to criminal prosecution. This is a more specific classification than that proposed in solution 3. For example, the third solution would provide that the district court have jurisdiction over all persons (of a specified age) charged with a felony. Solution 2 is in essence the same as 1 except that the juvenile court would *automatically order* the juvenile to the adult system rather than the juvenile being *automatically excluded* from the definition of delinquent. Hence solution 2 is a true "automatic certification" in the technical sense.

Although the solutions are listed separately, it is possible to

combine two or more of them. For instance, within the juvenile system establish determinate sentences for particular offenses, the duration of which would be served in a secure facility.

D. WHAT IMPACT WOULD A GIVEN SOLUTION HAVE ON THE JUVENILE OR CRIMINAL JUSTICE SYSTEM?

Any proposed solution must be examined according to its goals and the effects it will have on the juvenile or criminal justice system. Although it is necessary to analyze the effects of all proposed solutions, this type of analysis is beyond the scope of this summary report. For demonstration purposes, the following proposed solution will be analyzed: The exclusion of a specific group of persons from the jurisdiction of juvenile court based on age and offense. This solution is currently being discussed by the legislature.

The analysis begins with a discussion of the intended goals and whether the proposed solution can accomplish the goals. Then, the overall effects the solution could have on the juvenile or criminal justice system will be examined. The section concludes with a discussion of issues that may affect the implementation of this solution.

The aforementioned solution was developed to accomplish the following goals: 1) to promote public safety, and 2) to provide uniformity in the selection of serious juvenile offenders (i.e., juveniles certified as adults).

The first goal of this solution is to promote public safety. In developing the solution, the assumption was made that the adult system because of its capacity for long-term incarceration was the appropriate

system to achieve this goal. Therefore, the adult system must be able to demonstrate its ability to remove from the streets those juveniles classified as serious threats to public safety. According to a research report published by the Crime Control Planning Board, only 20 percent of the adult defendants convicted are sent to prison.¹ If this is examined by crime type, 38.0 percent of those defendants convicted of crimes against persons are sentenced to prison while convictions of property offenders result in prison sentences in 19.6 percent of the cases.² These percentages increase slightly for those offenses with a maximum sentence of 10 or more years. In this instance, 48.2 percent of those defendants convicted of crimes against persons and 27.2 percent of those defendants convicted of crimes against property are sentenced to prison.³

Based upon the above percentages, we would expect less than half of those juveniles transferred to the adult system to be incarcerated in prison. Further the Supreme Court Juvenile Justice Study Commission investigated the dispositions received by a sample of juveniles who were certified during a 3-year period from January, 1973, to December, 1975. They found that of those juveniles who were found or pleaded guilty only 11.8 percent of them were incarcerated.⁴ These findings suggest the adult system cannot guarantee that the serious offender will be confined.

¹Carol Thomssen and Peter Falkowski, *Sentencing in Minnesota District Courts* (St. Paul, Minnesota: Minnesota Crime Control Planning Board, 1978), pp. 17-18.

²Ibid., p. 20.

³Ibid., pp. 21-22.

⁴Supreme Court Juvenile Justice Study Commission. *Report to the Minnesota Supreme Court*. November, 1976, p. 75.

In the past few years, practitioners and policy makers have become increasingly concerned with the reference or certification procedure in this state. One of their concerns has focused on the variability from county to county in the type of offender being certified. At present, there exists no uniform criteria for determining which juveniles should be removed from the jurisdiction of juvenile court and prosecuted as an adult. This type of solution was developed to remedy this situation.

Although it is true that uniformity would be achieved in the treatment of certain individuals, it is not possible based upon the proposed legislation to achieve total uniformity in the type of juvenile transferred to the adult system. To increase uniformity the current reference statute must be replaced or amended. Under the proposed solution there would be little or no improvement over the current system. In reality, uniformity would not increase, but rather the number of juveniles being prosecuted as adults would increase.

Although it is possible that uniformity would increase if the present reference statute is replaced or amended (with uniform criteria for reference), other discretion exists within the system that could affect achievement of uniformity. The proposed solution is aimed directly at limiting the discretion of juvenile court judges at a specific decision point. However, discretion exercised by police officers, intake personnel, prosecutors, and judges at other decision points could result in the differential treatment of those offenders the legislature has pinpointed for uniform treatment.

Other systemic effects are possible which may have a bearing on the goals of the proposed solution. One which is ever present is the cost.

What are the costs and what effects will these costs have on the solution? It is possible that the combination of the defined problem (number of offenders) and proposed solution (transfer to the adult system for confinement) could mean a substantial increase in the criminal justice budget. If all levels of the system attempt to achieve the intended goals, police, courts, and corrections may need more money to investigate, arrest, process, try, and confine the now defined serious offender. If the legislature or local units of government are unwilling to supply this money, then goals will not be achieved.

Focusing on the definition and solution contained in Senate File 641 (see Table 1) and applying this information to current adult sentencing procedures, it is expected that less than half (48.2 percent) of these juveniles transferred to the adult system would be incarcerated. According to the Department of Corrections, the state adult institutions can now accommodate slightly more than 2,000 clients. Under this definition, the capacity of the state institutions would have to almost double to maintain current sentencing procedures. In addition to the state institutions, these definitions may impact the number of clients served by other treatment alternatives, e.g., probation, residential facilities, halfway houses, etc. As indicated by Table 2 this impact will vary by the number of juveniles classified as serious offenders.

Another possible effect is the creation of a true adversary system (between the state and a specific class of juveniles) within the juvenile court. This would be due to an increased surety, real or perceived, in the severity of consequences for certain criminal acts committed by juveniles. This effect in turn would encourage prosecuting and defense

attorneys to be more aggressive in the processing of juvenile cases. Rather than a system that now promotes and practices relaxed, informal relationships between all sides to expedite the disposition of cases, there could be greater scrutiny by judges, prosecutors, and defense attorneys in processing serious delinquent behavior. Specifically, this could result in more trials and greater constraints and supervision of the plea bargaining process in juvenile court.

Finally, the record keeping in the juvenile system may cause problems in the implementation of this and other solutions. Since there is no uniform tracking system for juveniles in Minnesota, it will be difficult to determine whether an individual meets a chosen legislative definition. Besides the possible discriminatory ramifications of this deficiency, a particular legislative solution may at the very least be cumbersome or in some instances cause major implementation problems.

For example, both Minnesota's Juvenile Court Act and its Rules of Criminal Procedure have time restrictions on the processing of individuals. The Juvenile Court Act provides that if a child is to be detained for more than 24 hours a detention order must be signed by a judge or referee. Further, this act states that for a child to be detained beyond 36 hours a petition must be filed and a detention hearing held.¹ The Rules of Criminal Procedure provide that an arrested person must be brought before a judge "without unnecessary delay, and in any event, not more than 36 hours after the arrest, exclusive of the day of arrest, Sundays and legal holidays or as soon thereafter as such judge or judicial

¹Minn. Stat. §260.171 (1) and §260.172 (1) (1978).

officer is available."¹ Assuming that the solution selected provides for the exclusion of a specific group of persons from the jurisdiction of juvenile court (these individuals once arrested for criterion offense are adults) the following issues are raised:

1. Who makes the determination whether an individual is to be processed in the adult or juvenile system: law enforcement, the county attorney, or an intake unit?
2. Can an accurate and timely determination be made as to in which system a person is to be processed? Is it possible to verify juvenile offense histories within 24 or 36 hours?
3. If an accurate or timely determination cannot be made, what are the ramifications regarding the processing of that individual? For example, if juvenile court does not have jurisdiction because the defendant's age and offense history meet the criteria, but through an error is brought before juvenile court for the first appearance and admits the petition, would double jeopardy attach or would the actions of the juvenile court be null and void for lack of jurisdiction?

The issues involved in deciding how the system should deal with the serious offender are extremely complex. The examples presented in this report are not an exhaustive list of all the possible effects this type of legislation could have on the system. *The conclusion that can be reached is that before any change is made an extensive analysis of the proposed solution must be conducted to determine what effects it will have on the present system.*

¹ Minn. R. Crim. P. 4.02, subd. 5 (1).

III. RECENT LEGISLATION IN OTHER STATES

The purpose of this section of the report is to provide information on recent legislative responses to the serious juvenile offender. Because Minnesota is considering adopting a method to deal with the serious juvenile offender, it is useful, at this point, to provide information on statutory provisions enacted in other states regarding this offender. Virtually every state has a mechanism for responding to the serious juvenile offender. The most common procedure is to transfer the juvenile for prosecution in the adult criminal court. The two principal mechanisms for this transfer are: 1) legislative waiver which involves age and offense limitations on the juvenile court jurisdiction and 2) judicial waiver (employed by 46 states including Minnesota) which involves the discretionary transfer by the juvenile court, primarily on the basis of the juvenile's amenability to treatment or threat to public safety.

The following examples from California, New York, and Washington will provide insight into the diversity of the solutions, the historical nature of such solutions, and the recent unique legislative responses to the serious juvenile offender.

A. CALIFORNIA

Prior to 1975 California utilized judicial waiver as a mechanism for responding to the serious juvenile offender. This transfer statute provided that a minor 16 or 17 years of age (juvenile court jurisdiction

is under the age of 18)¹ alleged to have violated any criminal statute or ordinance could, after a hearing, be transferred to the adult criminal court. It was within the discretion of the juvenile court to make the transfer if the judge concluded that the minor was not amenable to the care, treatment, and training programs available to the juvenile court. In addition, a report was required by a probation officer as to the minor's behavioral patterns. However, the extent to which the judge considered this report or any other evidence in the transfer determination was unclear.² This section is basically in effect today with the following additions and changes.

In 1975 the California legislature amended this transfer statute to provide for specific criteria to be used in determining whether a minor should be transferred. These criteria are: 1) criminal sophistication, 2) ability to rehabilitate the minor prior to the expiration of juvenile court jurisdiction, 3) previous delinquency, 4) success of previous attempts to rehabilitate, or 5) circumstances and gravity of the offense committed.³

Also in 1975, and with subsequent amendments, the legislature added a provision which allows a transferred minor to be remanded, prior to sentencing, to the custody of the California Youth Authority for an evaluation and report on the minor's amenability to treatment and training programs offered by the Youth Authority. The legislature has prohibited

¹ Cal. Welf. & Inst. Code §602 (West Supp. 1979).

² Cal. Welf. & Inst. Code §707 (West 1972).

³ Cal. Welf. & Inst. Code §707 (a) (West Supp. 1979).

the placement of a transferred minor in a state prison unless he has first been remanded for such an evaluation and report.¹

Additional changes were made to the transfer statute in 1976. These amendments mandate that a minor be transferred if it is alleged that he has committed certain criminal offenses.² However, this presumption of unfitness is rebuttable. It is within the discretion of the court to not transfer the minor if it concludes the youth would be amenable to the care, treatment and training programs available in the juvenile system based upon the evaluation of the same criteria set forth above.³

B. NEW YORK

New York operates its juvenile system within the Family Court with a relatively low jurisdictional age--under 16.⁴ This was its main legislative response to the serious offender for many years. Since 1971, however, New York has made three major changes which address the serious juvenile offender in conjunction with its jurisdictional limitation. These

¹ Cal. Welf. & Inst. Code §707.2 (West Supp. 1979).

² The specific offenses enumerated are: murder; arson of inhabited building; robbery while armed with dangerous or deadly weapon; rape with force or violence or threat of great bodily harm; kidnapping for ransom; kidnapping for purpose of robbery; kidnapping with bodily harm; assault with intent to murder or attempted murder; assault with firearm or destructive device; assault by any means of force likely to produce great bodily injury; discharge of firearm into inhabited or occupied building; or any one of the previous offenses against the person or assault with intent to commit rape, sodomy or robbery, committed or attempted against a person 60 years of age or older, or blind, or quadriplegic, or paraplegic, and such disability is known or should reasonably be known to person committing the crime, and who during the commission of the offense inflicts great bodily injury upon such person. (See Cal. Welf. and Inst. Code §707 (b) (West Supp. 1979).

³ Cal. Welf. & Inst. Code §§707 (b) (West Supp. 1979).

⁴ N.Y. Fam. Ct. Act §§712-713 (McKinney 1975 and Supp. 1979).

changes have established three distinct categories of serious young offenders in New York: 1) the "youthful offender" who is 16 to 18 years of age and is processed through the adult court, 2) the "juvenile offender" who is under 16 years of age and criminally responsible for the commission of specific criminal acts, and 3) the juvenile under 16 who commits a "designated felony act."

Prior to 1971 New York did not distinguish between youths 16 to 18 years of age who were processed in the adult criminal system. In 1971 and with amendments in subsequent years, the legislature created "youthful offender" sentencing provisions for the 16- to 18-year old offender.¹ Under this procedure the adult criminal court must determine which offenders in this age group are youthful offenders based upon consideration of the seriousness of the offense, the offense history and other judicially imposed criteria. All youths 16 to 18 years of age are eligible to be a youthful offender unless: a) the current conviction is for a class A-I or II felony² or armed felony; b) the youth has previously been convicted and sentenced for a felony; or c) such youth has previously been adjudicated a youthful offender following conviction of a felony or the youth has been adjudicated a juvenile delinquent who committed a designated felony act (to be discussed).³

¹N.Y. Crim. Proc. Law Article §720 (McKinney 1971 and Supp. 1979).

²N.Y. Penal Law §70.00 (McKinney 1975 and Supp. 1979). The maximum term for *all* class A felonies is life imprisonment. The *minimum* period of imprisonment for a class A-I felony is not less than 15 years nor more than 25 years. The *minimum* period of imprisonment for a class A-II felony is not less than 3 years nor more than 8 years 4 months.

³N.Y. Crim. Proc. Law §720.10 (2) (McKinney Supp. 1979).

The court has the discretion to determine if, "in the interest of justice," the convicted youth should be classified a youthful offender. However, if the youth has not previously been convicted of a crime or found to be a youthful offender, then classification as a youthful offender is mandatory.¹ If a youthful offender determination is made, then the conviction is replaced by this finding and the youth is subject only to special sentencing provisions which are less severe than the ordinary sentencing provisions.² Upon determining an eligible youth is *not* a youthful offender, the court must continue the action to judgment pursuant to the ordinary rules governing criminal prosecution.³ Thus, the legislature continued a policy of harsh criminal sanctions for some youths, but not for others.

The second major change occurred in 1976 with the promulgation of the "Juvenile Justice Reform Act." Among other things, this act introduced special provisions for responding to juveniles who have violated certain criminal laws at a certain age. These violations are known as "designated felony acts."⁴ This law attempts, first, to provide the

¹N.Y. Crim. Proc. Law §720.20 (1) (McKinney Supp. 1979).

²N.Y. Crim. Proc. Law §720.20 (3) (McKinney Supp. 1979). See also N.Y. Penal Law 60.02 and 60.03 (McKinney 1975 and Supp. 1979).

³N.Y. Crim. Proc. Law §720.20 (4) (McKinney Supp. 1979).

⁴N.Y. Fam. Ct. Act §712 (h) (McKinney Supp. 1979). A designated felony act is an act which if done by an adult would constitute one of the following crimes: (i) murder in the 1st and 2nd degrees, kidnapping and arson in the 1st degree, committed by a 13, 14, or 15 year old; (ii) assault in the 1st degree, manslaughter in the 1st degree, rape in the 1st degree, sodomy in the 1st degree, robbery in the 1st degree, kidnapping in the 2nd degree and arson in the 2nd degree, committed by a 13, 14, or 15 year old; (iii) attempted murder of the 1st and 2nd degrees and attempted kidnapping in the 1st degree committed by a 13, 14, or 15 year old; (iv) assault in the 2nd degree or robbery in the 2nd degree committed by a 14 or 15 year old, but only if defendant has committed one

surety that these juveniles will be processed through the family court, and, second, sets forth special rules for determining the dispositions for these juveniles.

As to the latter provisions, if an offender is found to have committed a designated felony act, the family court must decide whether this offender needs restrictive placement.¹ This decision is within the discretion of the court but only after considering statutorily enumerated criteria.² (The one exception to this rule is that there must be restrictive placement for offenders who have seriously injured persons 62 years of age or older.) If restrictive placement is ordered, then the court's discretion is severely limited. With few exceptions the offender must be placed in secure confinement for a specified period of time, placed in a residential facility for a specified period of time thereafter, and have intense supervision if he for any reason is allowed to leave a facility. The time periods for such placement are determined by the designated felony act.³ If restrictive placement is not ordered, the court may utilize the same dispositions available for other youths adjudicated delinquent.⁴

of the above listed offenses previously; or (v) an act other than a misdemeanor committed by an individual less than 16 years of age but only where there has been two prior findings by the court that such individual has committed prior acts, which if committed by an adult would be a felony.

¹N.Y. Fam. Ct. Act §753-a (McKinney Supp. 1979).

²N.Y. Fam. Ct. Act §753-a (2) (McKinney Supp. 1979). The court shall consider (a) the needs and best interests of the defendant; (b) record and background of the defendant; (c) nature and circumstances of the offense; (d) need for protection of the community; and (e) age and physical condition of victim.

³N.Y. Fam. Ct. Act §753-a (3 and 4) (McKinney Supp. 1979).

⁴N.Y. Fam. Ct. Act §753 (McKinney Supp. 1979).

The third major change sets forth another new category of serious offender--the "juvenile offender."¹ These offenders are youths of a designated age under 16 who are held criminally responsible for certain offenses. Generally, these offenders are processed in the adult court, but the legislature has provided for the transfer of these offenders to the family court under certain circumstances.²

The process for these offenders is as follows: If there is reasonable cause to believe the defendant is a juvenile offender, the court will turn the case over to the grand jury for action. If there is not probable cause to believe the defendant is a juvenile offender, but there is probable cause to believe the defendant is a "juvenile delinquent," then the court must order the case transferred to the family court. Obviously if there is not probable cause to believe either of the above, the case must be dismissed.³ Notwithstanding these requirements, the court shall, at the request of the district attorney, order removal of an action against a juvenile offender to the family court if it would be in the "interests of justice" to do so. (There are two exceptions to the court's discretion--certain armed felonies and 2nd degree murder may be transferred only under specific circumstances.)⁴

¹N.Y. Crim. Proc. Law §1.20 (42) (McKinney Supp. 1979). (1) A person 13, 14, or 15 years old is criminally responsible for murder in the 2nd degree and (2) a person 14 or 15 years old is criminally responsible for kidnapping, arson, assault, manslaughter, rape, sodomy, burglary, and robbery--all in the 1st degree; arson in the 2nd degree, robbery in the 2nd degree, burglary in the 2nd degree, 2nd degree murder and attempted 1st degree kidnapping.

²See N.Y. Crim. Proc. Law Art. 725 (McKinney Supp. 1979).

³N.Y. Crim. Proc. Law §180.75 (3) (McKinney Supp. 1979).

⁴N.Y. Crim. Proc. Law §180.75 (4) (McKinney Supp. 1979).

Transfer to the family court may also be made in the following instances. Those youths referred to the grand jury as alleged juvenile offenders may be transferred by the grand jury to the family court. This transfer may only occur if the grand jury has reasonable cause to believe, and legally sufficient evidence to establish, that a criminal act was committed, the criminal act is not one which falls within the juvenile offender definition, and therefore the grand jury may not indict.¹ Transfer to the family court may also be made, except on conviction for 2nd degree murder, after the juvenile offender is convicted. The essence of this process is that the youth is adjudicated delinquent in the criminal court and then transferred back to family court for disposition.²

If criminal court action results in a conviction of a juvenile offender, there are special sentencing procedures. If a sentence is imposed, it must be in accordance with sentencing guidelines established by the legislature for the juvenile offender.³

C. WASHINGTON

Prior to 1977 Washington had two legislative approaches to the serious juvenile offender. One approach was judicial waiver and the other was an option for restrictive placement in the juvenile system. Washington's waiver provision allowed the transfer of a juvenile to the adult system for prosecution if the juvenile had been arrested for a crime. This was the only legislative criteria. The other approach allowed a

¹N.Y. Crim. Proc. Law §190.71 (McKinney Supp. 1979).

²N.Y. Crim. Proc. Law §330.25 (McKinney Supp. 1979).

³N.Y. Penal Law §70.05 (McKinney Supp. 1979).

juvenile to be placed in restrictive confinement if the Court and the Division of Youth agreed that this was necessary because the juvenile was a danger to the community.

In 1977 the Washington legislature enacted a new juvenile code. With this new code came a substantial revision in the legislature's response to the serious juvenile offender. Although essentially the same options are still available, transfer or restrictive placement, the juveniles who are subject to, and the procedures for arriving, at restrictive placement or transfer are more definitive. Basic to both options is a new juvenile category--the "serious offender."¹ As will be seen this offender either is given special attention or is the focal point of the approaches mentioned.

The transfer process in Washington is called "declining jurisdiction."² This process begins by the filing of a complaint in juvenile court alleging that a criminal act has been committed. The prosecutor then screens the complaint for legal sufficiency and files an information, or diverts the case if all specified requirements are met. If the complaint alleges that a class A felony, class B felony, or attempt thereof, assault in the 3rd degree, rape in the 3rd degree, or any other offense

¹Wash. Rev. Code Ann. 13.40.020 (1) (Supp. 1979). "Serious Offender" means a person 15 years of age or older who has committed an offense which if committed by an adult would be: a) a class A felony or an attempt to commit a class A felony; b) manslaughter in the 1st degree, rape in the 1st and/or 2nd degree; or c) assault in the 2nd degree, extortion in the 1st degree, indecent liberties, kidnapping in the 2nd degree, robbery in the 2nd degree, burglary in the 2nd degree, statutory rape in the 1st or 2nd degree, where such offenses include the infliction of grievous bodily harm upon another or where during the commission of or immediate withdrawal from such an offense the perpetrator uses a deadly weapon or firearm.

²Wash. Rev. Code Ann. 13.40.110 (Supp. 1979).

in the serious offender definition has been committed, then an information is automatically filed with the juvenile court.¹ A hearing to decline jurisdiction and transfer the juvenile to adult court *may* be held upon the motion of prosecutor, juvenile, or the court. However, a decline hearing *must* be held, unless waived by the court, the parties, and their counsel, if the juvenile is: a) 16 or 17 years of age and the information alleges a class A felony or an attempt to commit a class A felony; or b) 17 years of age and the information alleges assault in the 2nd degree, extortion in the 1st degree, indecent liberties, kidnapping in the 2nd degree, rape in the 2nd degree, or robbery in the 2nd degree.² This hearing must be held prior to an adjudicatory hearing. The court after a decline hearing may order the case transferred for adult criminal prosecution upon a finding that the declination would be in the best interests of the juvenile or the public. The court is to consider the relevant reports, facts, opinions, and arguments presented by the parties and their counsel.³

Washington's second approach is the processing of the serious offender in the juvenile system. If the court finds that the juvenile is a serious offender, the court must commit the juvenile to the Department of Social and Health Services for the standard range of confinement developed by the Department.⁴ The court may conclude, however, that the standard range would effectuate a "manifest injustice" and thus impose a disposition

¹ Wash. Rev. Code Ann. 13.40.070 (Supp. 1979).

² Wash. Rev. Code Ann. 13.40.110 (1) (Supp. 1979).

³ Wash. Rev. Code Ann. 13.40.110 (2) (Supp. 1979).

⁴ Wash. Rev. Code Ann. 13.40.030 (1) (Supp. 1979).

outside the standard range.¹ The Department of Social and Health Services established the range for serious offenders based on legislative criteria. These ranges must be approved by the legislature, however, there is a minimum of 30 days for the serious offender. The Department shall also submit guidelines pertaining to the nature of the security imposed.²

¹Wash. Rev. Code Ann. 13.40.160 (1) (Supp. 1979).

²Wash. Rev. Code Ann. 13.40.030 (Supp. 1979).

IV. PROGRAMS AVAILABLE IN MINNESOTA
FOR THE SERIOUS JUVENILE OFFENDER

This section provides information on programs for the serious juvenile offender that are currently available in Minnesota. As indicated by the client description, there is considerable similarity (i.e., offense and prior record) between the clients served by these programs and the individuals defined in the serious offender legislation. Therefore, prior to implementing any major change it may be beneficial to examine further the impact of these programs on serious juvenile offenders.

A. PROJECT KATAHDIN (LOCATION: MINNEAPOLIS)

Katahdin is a community-based day treatment program for juveniles involved in repeated criminal offenses. It is directed toward the 14- through 18-year old youth who has a history of at least three formal adjudications. Katahdin accepts certified youths. The program uses an individualized treatment approach utilizing individual, family, and group counseling. Katahdin offers an accredited school program, community service involvement, and independent living skills development. It has the capacity to serve 30 clients per year through a 6- to 9-month program requiring 45 hours per week.

B. HARAMBEE (LOCATION: MINNEAPOLIS)

Harambee is a residential group home. It focuses on a population of male serious offenders (i.e., committed 2 or 3 property or person offenses) who have been unsuccessful in completing other programs. Participation in

the program is restricted to male adjudicated delinquents between the ages of 14 and 17. The program also accepts juveniles with a stayed certification and certified youths. It has the capacity to handle between 20-25 clients per year. Harambee offers a number of counseling services including individual, group, family, and vocational.

C. FREEPORT WEST (LOCATION: MINNEAPOLIS)

Freeport West is a residential treatment center for male juvenile offenders. It is directed toward a population of male adjudicated delinquents between the ages of 13 and 18 who are involved in repeat property offenses. The program is capable of handling 30 clients per year for an average length of stay of 8 months. It is a highly structured program based on behavior modification and emphasizes reality therapy such as the logical consequences of the clients' acts. The clients are expected to attend school as well as hold a job. Freeport West offers activities to build independent living skills.

D. NEXUS (LOCATION: MINNETONKA)

Nexus is a long-term residential treatment program for male felons convicted of either property or person offenses. It serves a population of hard-core male felons between the ages of 16-25 who have previously been through other treatment programs. The program has the capacity to handle 45 clients with juveniles accounting for approximately 27 percent of the total. The treatment program involves individualized treatment plans based on increasing independence. It offers individual, group, and family counseling. Since most clients have impaired learning abilities, the program offers special learning disability education, GED preparation, vocational education, and job placement.

E. SERIOUS JUVENILE OFFENDER PROGRAM (SPONSOR:
STATE, DEPARTMENT OF CORRECTIONS)

The purpose of this program is to provide treatment and control of the serious juvenile offender. The program provides intense surveillance both in its initial residential phase and in its later community-based stage.

Behavioral contracts worked out with each participant are key to the program. The program staff uses existing social and correctional services. It uses existing secure and nonsecure juvenile correctional facilities and contracts for community supervision and community-based programs.

A case management team approach is used in which a case manager, a community liaison worker, and the program director are assigned to work with the juvenile throughout their program participation. Liaison workers are from the juvenile's home community and are matched with the youth's needs.

The program has the capacity to serve 50-60 clients per year. For a description of the target population see Table 1.

A P P E N D I C E S

- A. Summary of Data Base for Study of the Minnesota Juvenile Court Population
- B. Estimating Procedures

APPENDIX A

SUMMARY OF DATA BASE FOR STUDY
of the
MINNESOTA JUVENILE COURT POPULATION

The data base for this study was derived from a ten-county sample. Counties participating in the study were Blue Earth, Hennepin, Nobles, Olmsted, Otter Tail, Pennington, Ramsey, St. Louis, Stearns, and Washington.

The counties were selected according to the following criteria:

- Each of the seven criminal justice planning regions would be represented in the study;¹
- Both metropolitan and outstate areas would be represented; and
- The main population centers of each region were included.

This sampling method may have an inherent bias in that only the larger population centers were selected. It is possible that the offenses for which juveniles are petitioned to court vary from county to county. However, comparisons with aggregate data indicate that the procedure produced a sample which accurately reflects statewide juvenile court activity.

All juveniles referred to court or intake with a subsequent referral to court² during the months of January and June of 1975 were included in

¹At the time study was initiated, there were only seven criminal justice planning regions in the state.

²Those juveniles whose case was closed at intake (i.e., this case was not referred to juvenile court. This reduced the sample size from 1,400 to 1,129 juveniles.

the sample. Information regarding all previous court referrals was also collected. Slightly more than 1,100 juveniles comprise the study population. Because the initial data collection phase followed these juveniles only through the end of 1975, additional information was collected in these juveniles for a follow-up period of 18 months. If a juvenile was less than 16 at the end of 1975, we have approximately 1 1/2 years of additional information on him; if he was over 16, we only have information on him up to his eighteenth birthday, when he came under the jurisdiction of adult criminal court.¹

¹The juvenile court can maintain jurisdiction to age 21 for offenses committed prior to age 18.

APPENDIX B

ESTIMATING PROCEDURES

We have used two procedures for estimating the total number of serious offenders under each definition statewide. The first uses the number for each category found in the total Crime Control Planning Board's sample as a base. This number is one-sixth of the total number of juveniles in court for the counties covered by the two-month sample. The sample itself covers 52.7 percent of the state's juvenile population between the ages of 10 and 17.¹ Therefore, a reasonable estimate for the statewide number is 11.385 times the number in the category actually counted in the sample, assuming that the sample is representative of the entire year.

Let N_T be the estimated number of juveniles statewide under Senate File 644 and n the number of juveniles meeting the criteria found in the sample. Then:

$$n = \frac{1}{6} \times 0.527 \times N_T,$$

$$N_T = \frac{6n}{0.527},$$

$$N_T = 11.385n,$$

$$n = 371 \text{ (number of juveniles in the sample).}$$

Therefore:

$$N_T = 11.385 \times 371,$$

$$N_T = 4,224.$$

¹Based on the 1970 Census.

Because the sample is heavily weighted toward Hennepin County, a second estimating procedure was used separating the Hennepin County and outstate juveniles from the original sample. The Hennepin County figure (n_H) is simply multiplied by 6 to obtain the yearly estimate for that county alone:

$$n_H = 6 \times 203,$$

$$n_H = 1,218.$$

Because the outstate sample covers 36.63 percent of the outstate juvenile population, the outstate figure (n_O) is multiplied by 16.38 to obtain an outstate estimate.

Let N_S be the estimated number of juveniles for all counties except Hennepin under Senate File 644 and n_O the number of juveniles meeting the criteria found in the sample. Then:

$$n_O = \frac{1}{6} \times 0.3663 \times N_S,$$

$$N_S = \frac{6n_O}{0.3663},$$

$$N_S = 16.38n_O,$$

$$n_O = 168.$$

Therefore:

$$N_S = 16.38 \times 168,$$

$$N_S = 2,752.$$

The two separate estimates are then added to arrive at a total:

$$1,218 + 2,752 = 3,970.$$

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¹For further reference information, note the "Bibliography" and "Legal Bibliography" of the Research Report *Alternative Definitions of "Violent" or "Hard-Core" Juvenile Offenders: Some Empirical and Legal Implications* (St. Paul, Minnesota: Crime Control Planning Board, 1977, Revised 1978), pp. 75-81, and the "Bibliography" of the Research Report *A Profile of the Minnesota Juvenile Court Population* (St. Paul, Minnesota: Crime Control Planning Board, 1979), pp. 71-73.

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