THE CRIMINAL JUSTICE SYSTEM AT WORK IN MINNESOTA

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Governor's Commission on
Crime Prevention and Control
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PREFACE

Governor Harold LeVander and Attorney General Douglas Head have encouraged the Governor's Commission on Crime Prevention and Control to view the Criminal Justice System in Minnesota as a "system".

The Commission staff consequently developed a paper describing the "system at work" and incorporated it in the 1970 Minnesota Plan.

St. Paul, Minnesota

This document is prepared as a public service with the hope that it will assist in the better understanding of the Criminal Justice System in Minnesota.

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INTRODUCTION

The primary intent of this System at Work description is to portray the theoretical manner in which an individual, subject to the authority of the Criminal Justice System, proceeds from initial contact to ultimate release. In addition to describing the theoretical processes for handling various categories of alleged offenders, consideration is given to the effects of the substance of certain offenses upon these theoretical processes.

The System at Work Project, thus, assumes a two-phased descriptive nature loosely characterized as procedural and substantive. Flow charts are incorporated to provide a graphic representation designed to parallel the narrative descriptions of the theoretical processes.

THE ADULT FELON OR GROSS MISDEMEANANT

Under Minnesota law, a felony means a crime for which a sentence of imprisonment for more than one year may be imposed. A misdemeanor means a crime for which a sentence of not more than 90 days, or a fine of not more than $300, or both may be imposed. A gross misdemeanor means any crime that is not a felony or a misdemeanor. (See Minnesota Statutes Section 609.02.)

A suspected adult felon or gross misdemeanant generally comes into contact with the Criminal Justice System at the time of his arrest. Arrests may be made by a police officer with a warrant, by a police officer without a warrant or by a private person. A police officer and a private person have basically the same powers of arrest with a warrant. A police officer without a warrant under Minnesota law has powers of arrest when:

- The person arrested has committed or attempted a public offense in his presence;
- The person arrested has committed a felony, although not in his presence;
- A felony has in fact been committee, and there is reasonable cause for believing the person arrested has committed the felony.

A police officer has certain authority that the private person does not have in connection with arrests without a warrant. A police officer may break open an outer or inner door or window of a dwelling house if, after notice of his office and purpose, he shall be refused admittance. In addition, a police officer may at night, without a warrant, arrest any person whom he may have reasonable cause for believing to have committed a felony. He shall also be justified in making such arrest, although it shall afterwards appear that no felony has been committed.

When arresting a person without a warrant, the officer must inform the person of his authority and the cause of the arrest. The exception to this rule is when the person is engaged in the actual commission of a public offense or shall be pursued immediately after an escape. Normally, within one business day of the time of arrest without a warrant, the suspect is charged or released without charge. On the following day the suspect appears in justice or municipal court and the right to and amount of bail is determined.

A police officer also has the authority to make arrests with a warrant, which a private citizen has no authority to do. Such arrest follows upon a charge made upon probable cause of the commission of a felony by the person arrested. Such charge is generally made following investigation by police officers that results in the issuance of a formal complaint stating the necessary probable cause and upon a warrant issued by a municipal or justice court. A complaint against a suspected felon or gross misdemeanant is normally prepared by the appropriate prosecuting attorney. The facts thereof must be sworn to by a police officer or complaining witness before a magistrate. If he determines that probable cause for the arrest exists, he will issue a warrant to be served by a police officer in accomplishing the arrest.

Following the arrest with or without a warrant, the suspect is entitled to representation by an attorney of his choice, or to the appointment of a Public Defender if the suspect is indigent. The suspect is entitled to be represented by an

attorney from this point forward in the criminal proceedings. For the purpose of determining whether a suspect is entitled to representation by the Public Defender or by a court appointed attorney, as well as for the purpose of determining the suspect's right to release on bail or his personal recognizance or to the custody of some other person, the suspect is entitled to a prompt initial appearance before a magistrate. In felony and gross misdemeanor cases a defendant must be told that he has the right to a free Public Defender if he cannot afford private counsel.

On the basis of the complaint issued prior to an arrest with a warrant, or subsequent to an arrest without a warrant, the suspect is entitled to have or waive a preliminary hearing. The purpose of the preliminary hearing is to determine whether or not the suspect should be bound over to District Court for trial on the alleged charges. The preliminary hearing is perhaps best described as a small scale trial of the charges. Another purpose of the preliminary hearing is to determine whether or not sufficient competent evidence exists, to convince the Municipal Court Judge or Justice of the Peace conducting the preliminary hearing, that probable cause exists to believe that the defendent committed the crime charged.

The preliminary hearing, of course, is not an actual trial. No determination as to guilt or innocence is made and the defendant is not called upon to enter a plea of guilty or not guilty to the charge. If the magistrate determines that probable cause exists, the defendant is bound over for disposition in the District Court. If the burden of demonstrating probable cause is not met at the preliminary hearing, the defendant, of course, is entitled to release and discharge of his bail. A defendant likewise has the right to waive a preliminary hearing and proceed directly to the arraignment stage of proceedings for the purposes of entering a plea to the charges alleged against him.

If the determination is made at the preliminary hearing that the defendant should be bound over to District Court for trial, an *"information"* must issue from the County Attorney on the basis of which the defendant shall be arraigned on the charges against him. Upon arraignment in District Court the defendant still has the same rights regarding bail. A determination by the District Court as to the availability of and amount of bail seldom varies from that made by the lower court. Occasionally, the amount of bail is reduced, but only rarely is it increased.

A very brief description of the role of the Grand Jury is appropriate at this stage. Grand Jury indictment is an alternative available to the County Attorney instead of the formal complaint, preliminary hearing and information process. Subsequent to a preliminary hearing, a matter may be brought before the Grand Jury for consideration of an indictment. The Grand Jury usually considers matters prior to the arrest or other processing of a defendant. If the Prosecuting Attorney takes a matter directly to the Grand Jury prior to the arrest of any suspect, such may be a person's first contact with the Criminal Justice System.

The Prosecuting Attorney introduces evidence to the Grand Jury on the basis of which the Grand Jury determines whether or not to issue an indictment against a particular individual. If such an indictment does issue, the suspect can be arrested on a warrant based on such an indictment, and proceeds directly to the arraignment in District Court on the charges alleged in such indictment.

At the time of arraignment, a defendant must enter a plea of guilty or not guilty. If the defendant enters a plea of guilty, the matter proceeds directly to the pre-sentence determination of guilt by the sworn testimony of the defendant, and then to the sentencing processes. If the defendant enters a plea of not guilty, the matter is set for trial.

In addition, it should be noted that, at or before the time of arraignment, a negotiated plea or non-judicial disposition is possible. Generally, within this category would be included the possibilities of an agreement by the defendant to enter a plea of guilty to a lesser charter. There is also the possibility of a determination by the Prosecuting Attorney, of his own volition, that inadequate evidence exists for him to proceed with the charge.

If the plea of not guilty stands, the matter proceeds to trial by a jury or by the court. In all felony or gross misdemeanor cases, the defendant is entitled to a jury trial if he so demands. Prior to a trial there usually are hearings on motions concerning the admissability of certain and testimonial evidence, the possible denial of constitutional, statutory, or procedural rights of the defendant or other matters. A finding of not guilty at the trial stage results in the release of the defendant. A finding of guilty at the trial moves the matter to the sentencing stage of proceedings.

Sentencing of a convicted felon or gross misdemeanant is always preceded by an examination by the court and is normally referred for further investigation by the Probation Department. Such an investigation inquires into relevant social and economic matters that might influence a judge in determining the appropriate sentence for the individual. At this stage, for the first time the offender's prior criminal record becomes relevant as a factor in determining the appropriate sentence.

Before a sentence takes effect, the possibilities exist that the defendant would wish to make post-trial motions for a new trial. Such motions could result in findings of not guilty, or new or additional trial proceedings. Following sentencing without motion or with a motion not resulting in reversal or a new trial, the sentence imposed by the court takes effect. The sentence to the offender could be imprisonment, fine or probation with or without conditions imposed on the probation. Sentence impositions may be stayed, at which point the conviction is deemed to be for a misdemeanor.

In the case of the Adult Offender, a sentence is to be carried out at a specific institution as determined by the court. The offender becomes subject to the Adult Corrections Commission for the purpose of possible eventual determination of right to parole. (Youthful Offenders subject to the jurisdiction of Youth Conservation Commission are considered in a subsequent part of this discussion.) Following the completion of a sentence at an institution, after the completion of a parole period, after the payment of a fine or upon completion of a probation period, the offender is ultimately discharged from the Criminal Justice System.

Following an adjudication of guilt and imposition of sentence by the District Court, a defendant may appeal his conviction to the Supreme Court of the State. Such appeals usually allege some error in legal proceedings that allegedly prejudiced the defendant at the District Court level, and usually seek either outright acquittal or a reversal with a new trial ordered.

If a matter is reversed and outright release ordered, the defendant is discharged from custody or his fine forgiven. If a new trial is ordered, the matter is remanded to District Court for further proceedings. No additional preliminary hearing or municipal court proceedings are usually required in the case. While it is permissible for another bail to be set by either the District Court or the Supreme Court on matters under appeal, it is not a statutory or constitutional right of the defendant to have bail so set.

THE YOUTHFUL OFFENDER

With the exceptions noted in this section, a Youthful Offender is handled in the Criminal Justice System in the same manner as an adult felon or gross misdemeanant. A Youthful Offender, under Minnesota Law, is any person over 14 years of age, but less than 21 years of age, at time of apprehension who has been prosecuted and found guilty of a felony or gross misdemeanor. Minnesota law indicates that proceedings in a Juvenile Court with respect to a juvenile are not criminal proceedings. Therefore, for a youth between the ages of 14 and 18 to be classified as a Youthful Offender, the Juvenile Court would first have to refer the youth for prosecution according to the conditions outlined in Minnesota law.

Minnesota law stipulates that, with certain exceptions, the District Court shall commit to the Youth Conservation Commission (YCC) every person convicted of a felony or gross misdemeanor who is found to be less than 21 at the time of his apprehension. The exceptions occur when a youth is sentenced to life imprisonment, to 90 days or less in a jail or workhouse, to a fine only, or to probation. The court cannot commit the youth directly to an institution of the court's choice, but has to commit him to the custody of the Y.C.C.

Essentially, then, the sentencing alternatives available to the court are:

- Commitment to a jail or workhouse for 90 days or less;
- Commitment to the Y.C.C. but granting a stay of execution and placing the youth on probation (in such cases the probation cannot be granted until an investigation and report have been made by the probation officer of the court);
- A fine only;
- Commitment to the custody of the Y.C.C.

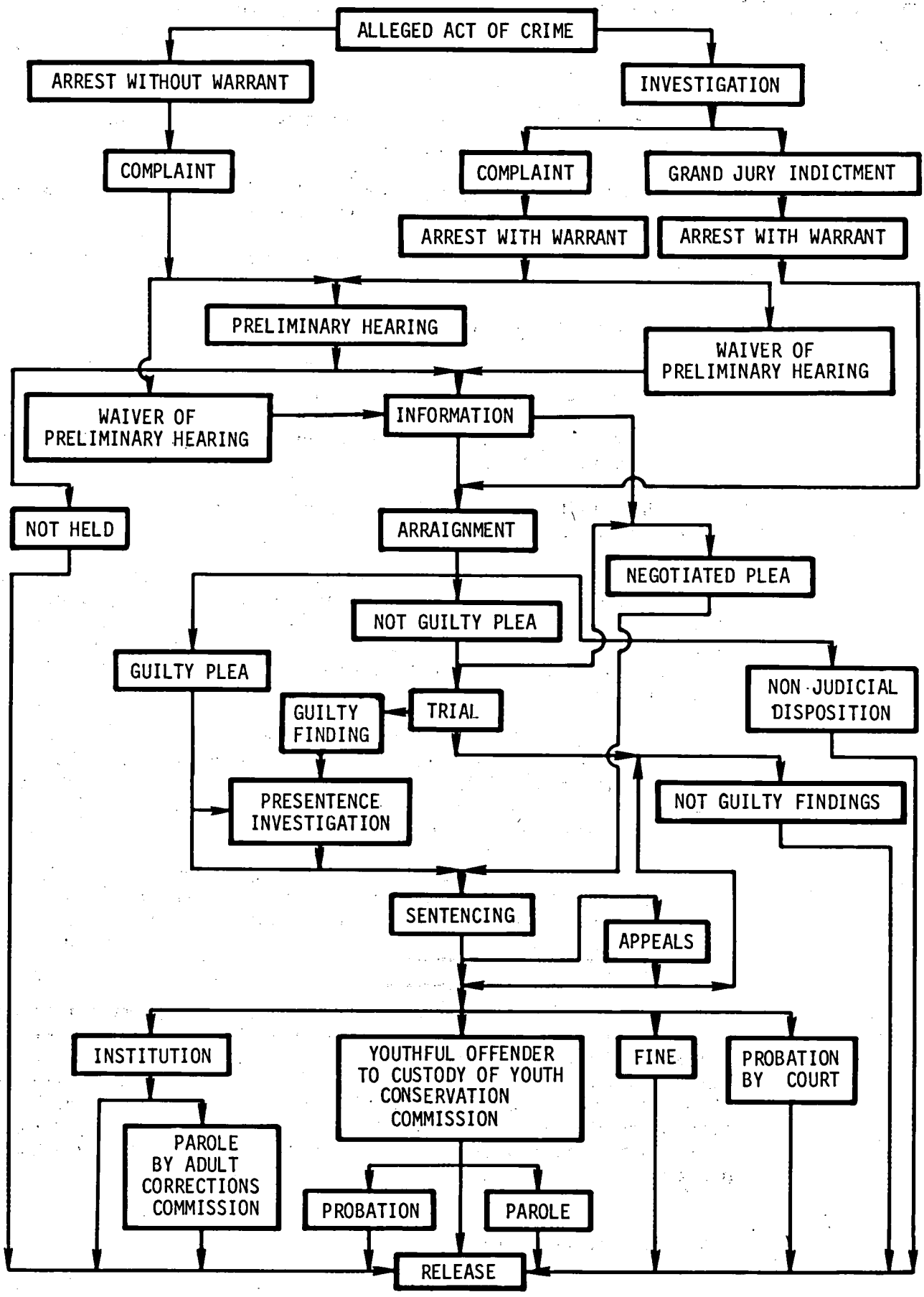
If probation is granted, the court, in its descretion, may place the defendant under the supervision of the Y.C.C. providing the commission consents. Otherwise such probation may be granted pursuant to law without regard to commitment to the Y.C.C. The terms of probation are within the descretion of the court.

If the alternative taken by the court is commitment to the Y.C.C., the youth is sent to the State Reformatory for Men at St. Cloud, or to the Correctional Institute for Women at Shakopee or other state institutions. The initial phase of the commitment is the reception and diagnostic phase. At that time the youth's history is reviewed, extensive testing and observation takes place and the staff of the institution develops reports and recommendations for review by the Y.C.C. Based on the findings of the report, the Y.C.C. can:

- Return the offender to the community on probation;
- Order confinement to such reformatory, state prison, jail or other place of confinement to which he might have been sentenced by the court in which he was convicted, except for the requirement of commitment to the Y.C.C.;

- Order release on parole from confinement under such supervision and conditions as the Y.C.C. believes conducive to law abiding conduct;
- Order reconfinement or renewed parole as often as the Y.C.C. believes to be desirable;
- Discharge the person from the Y.C.C. control;
- Refer the individual to a county welfare board or other licensed child placing agency for placement in foster care;
- Revoke or modify any order except an order of discharge.

ADULT OR YOUTHFUL OFFENDER
FELON OR GROSS MISDEMEANANT
DISTRICT COURT



THE JUVENILE DELINQUENT

In Minnesota a delinquent child is defined by law as a child under 18 years of age who:*

- Has violated any state or local law or ordinance, with the exception of traffic violations which are handled separately;
- Has violated a federal law or a law of another state and whose case has been referred to the Juvenile Court;
- Is habitually truant from school;
- Is uncontrolled by his parent, guardian, or other custodian by reason of being wayward or habitually disobedient;
- Habitually deports himself in a manner that is injurious or dangerous to himself or others.

In the majority of cases a child is found to be delinquent because of a violation of a state law or local law or ordinance.

Most frequently the juvenile comes into contact with the Criminal Justice System when he is apprehended by a law enforcement officer. The juvenile may be taken into immediate custody in accordance with the laws relating to apprehensions; however, technically, this is not considered an arrest. The law enforcement officer must notify the parent, guardian, or custodian of the child as soon as possible after taking him into custody.

The law requires that except where the immediate welfare of the child or the protection of the community require that the child be detained, the child must be released to the custody of his parent, guardian, custodian or other suitable person. The person awarded custody must promise to bring the child to court, if necessary, at such time as the court may direct.

If the child is detained by the authorities, the detention takes place in a detention home, a licensed facility for foster care, a suitable place designated by the court where no licensed facility for foster care is available, or in a room entirely separate from adults in a jail, lockup, police station or other facility for the detention of adults.

The process of adjudging a delinquent is commenced by filing a petition in the Juvenile Court. The petition must plainly set forth the facts that bring the child within the jurisdiction of the court. The petition may be filed by any reputable person who has knowledge of or information and belief as to the alleged act or acts of delinquency. The vast majority of petitions (80%) are initiated by law enforcement officers, with school authorities and parents comprising the major portion of the remaining referrals. The County Attorney may assist in drafting the petition.

* See Minnesota Statutes Section 260.015.

After the filing of the petition, the juvenile is summoned into the Juvenile Court for a preliminary hearing. The juvenile, parent, guardian or custodian have the right to legal counsel. If they desire legal counsel, but are unable to employ it, the court will appoint counsel at the preliminary hearing. The juvenile is at that time informed of the allegations contained in the petition and given an opportunity to either admit or deny that he is delinquent. If the juvenile denies the allegations of the petition, the court will then set a date for a contested hearing. Notice of the contested hearing is sent to the County Attorney who is responsible for presenting evidence to prove the allegations contained in the petition.

The hearing on the petition is held in Juvenile Court. In the metropolitan counties of Hennepin and Ramsey the Juvenile Court Judge is a District Court Judge assigned to the Juvenile Court. In the remaining 85 counties the Probate Court has juvenile court jurisdiction.

At the contested hearing the juvenile must be accompanied by a parent or guardian and his attorney, if he has one. The general public is excluded from the hearing. Evidence in support of the petition is presented by the County Attorney. The juvenile has the right to cross-examine witnesses and to introduce evidence contesting the allegations of the petition. A record is made of the proceedings and is available to the parties. However, neither the record nor its contents can be otherwise disclosed except by order of the court.

Upon hearing the petition and sustaining the allegations, the Juvenile Court can order the Probation Officer to do an investigation including a complete social history on the child. Generally, the court will decide the disposition of the case after receipt of the Probation Officer's report.

The judge has several available alternatives. He may dismiss the case. He may place the child on probation, in which case the probation officer usually assumes the duties of supervision. The judge also may commit the child to a county correctional institution. Upon release from those institutions the child is still under the custody of the county officials. At the present time only Hennepin and Ramsey Counties operate county level facilities for delinquents. For the remaining counties the only commitment facilities are those provided by the state. Also available as a possible disposition is placement of the juvenile in a foster home, a group home or some other suitable facility.

As a final alternative the judge may commit the child to the custody of the Youth Conservation Commission. The Y.C.C. is a board composed of one full-time representative of the Department of Corrections and five part-time members appointed by the Governor and confirmed by the State Senate. The Commission has the authority to transfer wards from one institution to another within the department, as well as grant and revoke parole and discharge wards from their custody.

All delinquents committed to the Y.C.C. are initially sent to the Department of Corrections Reception and Diagnostic Center at Lino Lakes. The child's case is reviewed and an evaluation is prepared for consideration by the Y.C.C. When the Y.C.C. reviews the case they have several alternatives, including release back to the community on probation.

If the Y.C.C. feel institutionalization is necessary, they may send boys to the State Training School for Boys at Red Wing, the Thistledew Camp, the St. Croix Camp or the Youth Vocational Center at Rochester, Minnesota. Certain of the

younger boys may also be transferred to the Home School at Sauk Centre. For the girls the alternatives are essentially transfer to Sauk Centre or return to the community. In all cases, for both boys and girls, the Commission may decide that placement in facilities such as a state hospital or other private and public facilities may be more appropriate to the needs of the youngster, and the Commission may seek to make the necessary arrangements to effect such a transfer.

Upon satisfactory progress while in an institution, the child may be released on parole by the Y.C.C. At that time he will be supervised by a parole agent who is an employee of the State Department of Corrections. The Y.C.C. also has authority to discharge a child outright, when it sees fit, without further supervision or control.

Another area in which the Juvenile Court has jurisdiction is that of the Juvenile Traffic Offender. The Juvenile Traffic Offender is defined in Minnesota Statute Section 260.13 as a child who violates a state or local traffic law, ordinance, or regulation, or who violates a federal, state, or local water traffic law.

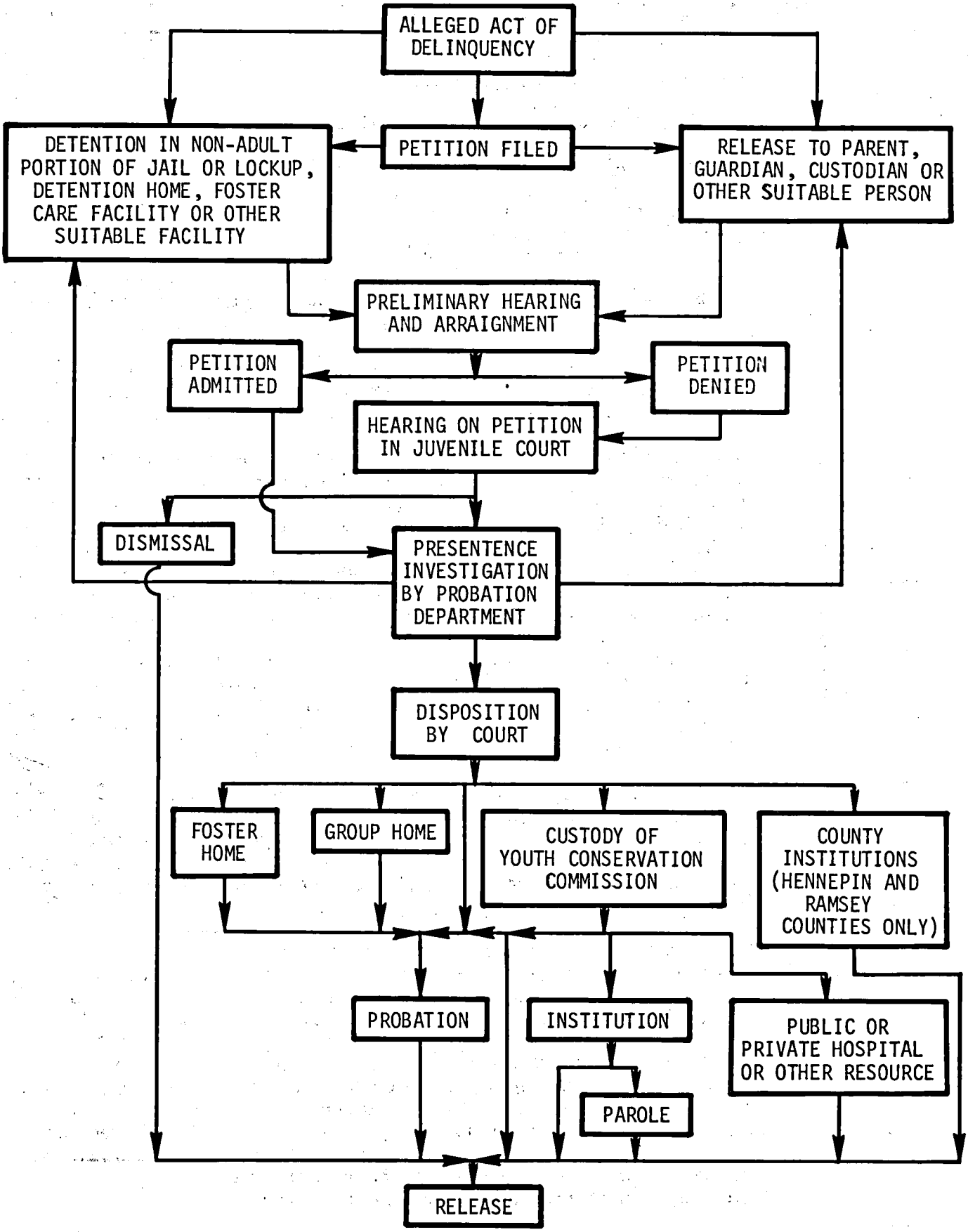
Basically the procedures and rights in this type of matter are the same as in a delinquency matter. One difference is that a traffic citation replaces a formal type delinquency petition. It should be noted that if a juvenile drives after revocation of his driver's license he may then be petitioned in on a delinquency petition.

Dispositional alternatives in such traffic matters, if the court finds that an offense has been committed, are to:

- Reprimand the child and counsel with the child and his parents.
- Continue the case for a reasonable period and establish conditions governing the child's use and operation of any motor vehicle or boat.
- Require the child to attend a driver improvement school.
- Recommend to the Highway Department the suspension of a child's driver's license.
- Recommend to the Highway Department cancellation of the child's license until 18 years of age for certain reasons defined in the statutes.
- Place the child under the supervision of a Probation Officer under conditions established by the court, including reasonable rules relating to the operation of motor vehicles or boats.

JUVENILE DELINQUENT OFFENDER

JUVENILE COURT



THE ADULT MISDEMEANANT

Under Minnesota law a misdemeanor means a crime for which a sentence of not more than 90 days or a fine of not more than $300 or both may be imposed. Included in this category are:

- Most traffic offenses.
- All municipal ordinance violations.
- Most violations of laws and rules pertinent to regulatory agencies of the state or its political subdivisions.
- A large number of acts prohibited by statute, but deemed by the legislative authority to be less serious in nature and therefore subject to the least severe penalties of the various categories of crime.

Normally, after an alleged misdemeanor the suspected misdemeanant's first contact with the Criminal Justice System is through an arrest or a notice to appear in court to answer for a charge. The question of whether or not an actual arrest is made is determined generally by the seriousness of the act. For example, most traffic offenses or ordinance violations are handled simply by a traffic ticket or a notice of violation indicating a requirement of appearance or other settlement with the court. As with the more serious crimes and arrests a notice to appear can be accomplished with or without a warrant.

Neither a law enforcement officer nor a private citizen has authority to arrest for a misdemeanor unless the misdemeanor was committed in the presence of the arresting party. If a misdemeanor was not committed in the presence of a police officer or private citizen wishing to make an arrest, the suspected misdemeanant can be brought before the court only through a formal complaint procedure.

The formal complaint must be set forth sufficient facts to demonstrate probable cause that the accused person committed the alleged act and must be sworn to before a magistrate. If the magistrate is convinced that the probable cause is stated in the sworn complaint, he may issue a warrant for the arrest of the defendant, or instruct that the defendant be notified to appear to answer to the charges.

Arrests made for misdemeanors committed in the presence of the arresting party without a warrant may still proceed to the formal complaint stage upon request of the defendant. If the defendant does not request a formal complaint in such situations, the matter may be entered on the court docket as a *"tab"* charge.

Following an arrest or a notice to appear a defendant is entitled to an attorney of his choice, or if indigent, to the public defender or other court appointed attorney, to represent him at all proceedings beyond that stage. There is seldom an initial appearance or preliminary hearing on a misdemeanor charge. Therefore, the matters of a right to a court appointed attorney, or to bail, are generally determined at the arraignment of the defendant. The defendant is entitled to an arraignment promptly following his arrest or notice to appear in court.

As in felony or gross misdemeanor cases, the purpose of the arraignment is for the entry of a plea of guilty or not guilty by the defendant. Unlike the more serious crime categories, an actual appearance or arraignment in court may not be required in certain misdemeanor cases. The familiar instances in which a court appearance is not required include the operations of traffic violations bureaus, ordinance violation bureaus and bail forfeiture systems. In these situations a defendant indirectly admits guilt for the alleged offense by payment of a fine through the mails or otherwise.

If the defendant enters a plea of guilty in open court, the matter proceeds immediately to the sentencing stage. When the defendant can and does enter a de facto plea of guilty through the payment of a fine, he is released from the Criminal Justice System at that point. If a not guilty plea is entered by a defendant, the matter is set on for trial in the Municipal or Justice of the Peace Court having jurisdiction over the matter. At any time following arrest, and up to the actual trial of a misdemeanor case, the possibility exists that the matter will be disposed of by a negotiated plea or other non-judicial means.

For example, the matter may be disposed of through an agreement between defense counsel and the prosecuting attorney that a lesser charge to which the defendant will plead guilty is more appropriate. Similarly, further investigation by a prosecuting attorney might initiate the dismissal of the matter for lack of evidence, or possibly might initiate the decision not to issue a formal complaint.

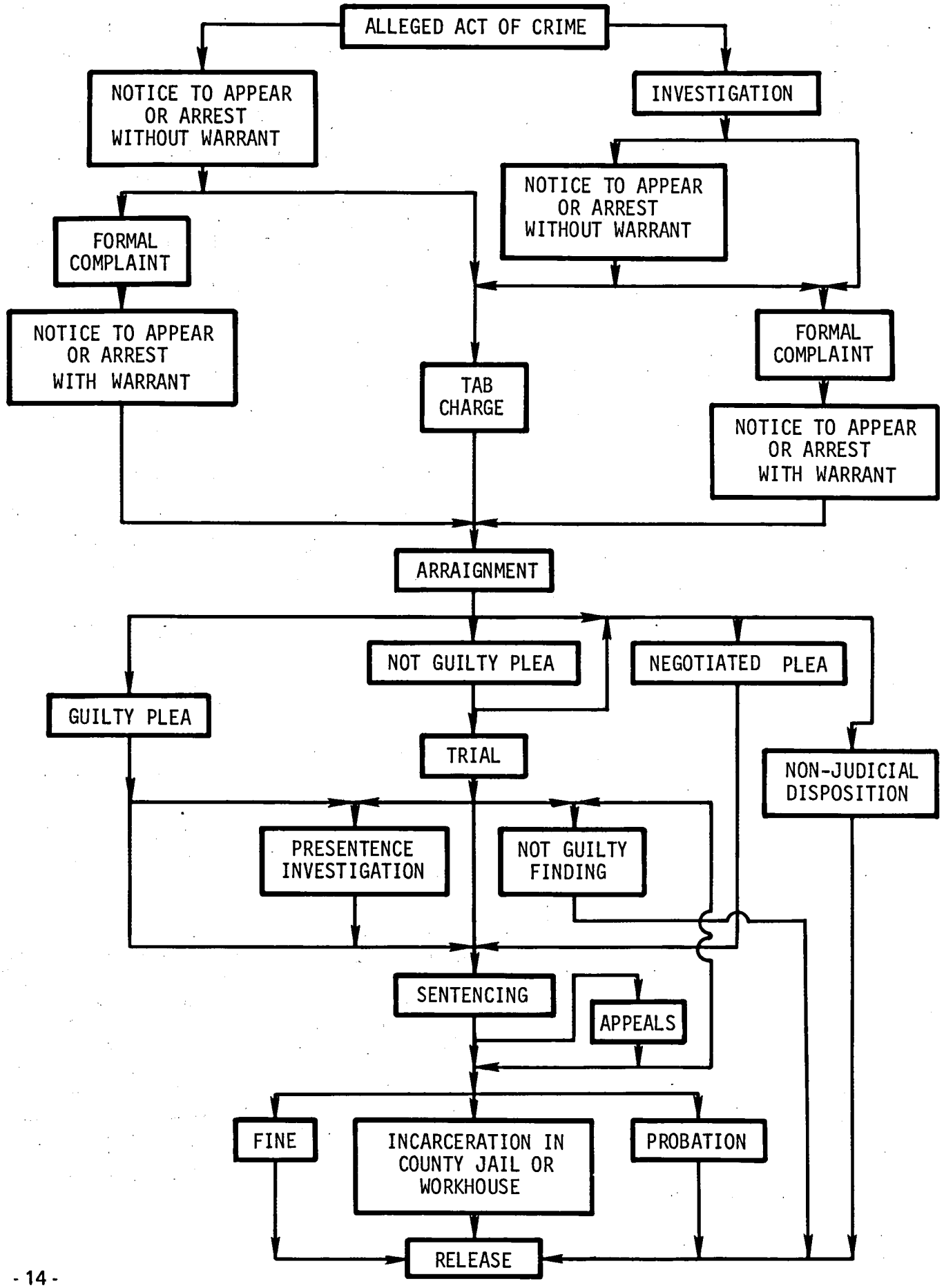
When a not guilty plea stands, the matter proceeds to trial by the court or by a jury. As with more serious offenses the defendant is entitled to a trial by jury. However, in misdemeanor cases, due to the time and expense involved as weighed against the seriousness of the charge, most matters are tried by the court without a jury. In Hennepin County in certain less serious misdemeanor matters, particularly in the traffic category, a defendant is not entitled to a jury trial in the Municipal Court or original jurisdiction. However, the defendant is entitled to a trial *"de novo"* by jury at the district court level, if he so demands, upon a finding of guilty by the lower court.

Upon a finding of guilty the defendant is sentenced by the trial court. While the procedure of pre-sentence investigation by a probation officer is usually available to the magistrate upon request, this intermediate step prior to sentencing is used far less frequently than in instances of felony or gross misdemeanor cases. The magistrate more often makes his decision upon his own evaluation and examination of the defendant and the surrounding circumstances.

A defendant likewise has the right to appeal the decision of the trial court in a misdemeanor case prior to the carrying out of the sentence imposed. Again because of the less serious nature of the charge and the less serious punishment that flows therefrom, the appeals are less frequent.

The magistrate may impose a fine of up to $300, order imprisonment of up to 90 days or both, or may place the defendant on probation with or without supervision for a period up to one year. The counties of Hennepin, Ramsey, and St. Louis have workhouse facilities and other counties utilize jails and lockups. A provision of Minnesota law used more frequently in misdemeanor cases than in more serious offenses allows a magistrate to place a defendant on probation with or without supervision and upon such terms as the court may prescribe and to stay the execution of sentence for a period of probation. Upon the expiration of such stay, unless the stay has been revoked or the defendant discharges prior thereto, the defendant shall be discharged as a matter of law and the offense thereby stricken from his record. Upon the payment of fine or the completion of a prescribed period of imprisonment or term of probation, a misdemeanor defendant is released from the Criminal Justice System.

ADULT MISDEMEANANT
MUNICIPAL COURT
and
JUSTICE OF THE PEACE COURTS



THE DRUG ADDICT

The 1967 Report of the President's Commission on Law Enforcement and Administration of Justice dealt substantially with the growing problem of narcotic and drug abuse. With drug addicts, as well as alcoholics, the question arises whether or not the existing Criminal Justice System should be the device for handling individuals with these problems. To quote the Commission:

> *"One of the system's greatest needs is for the community to establish institutions and agencies to which policemen, prosecutors and judges can refer various kinds of offenders, without being compelled to bring the full force of criminal sanctions to bear on them."*

The Commission did recommend this course of action in cases of public drunkenness. This approach might also be a better solution in the field of drug abuse, especially non-narcotics.

Although the impacted area of the problem is largely confined to the three largest cities in Minnesota, in recent years a substantial proliferation of the problem has spread to all parts of the state. Recent statistics indicate that the problem has been identified in every one of the 87 counties with some evidence of police action in all of them.

Both Minneapolis and St. Paul police officials report an increasing incidence of requests for information, advice, and assistance from outside enforcement and court personnel. Tentative evidence would seem to indicate that the spread of the problem has a correlation with the dispersion and increase in size of the state college and junior college systems. Police are outspoken in their alarm at the human wreckage with which they are confronted in week-to-week activities among the drug using youth. They are equally disturbed by the inadequacy of social response and the failure of solution of the problem. This is reflected in the repetitious probations meted out to the repeated offenders in lieu of better means to cope with or alleviate the problem.

A particular concern in Minnesota, as elsewhere, must be the youthful experimenter who, by incurring a criminal record through a single incident, can substantially affect his entire life. Minnesota reflects the national trend, which has been widely reported in the professional journals as well as in the popular press. These media reports indicate that the problem of drug use and abuse is accelerating, and that the age groups affected are becoming progressively younger. Evidence, albeit fragmentary and often unverifiable, seems to show a far more rapid diffusion of the usage to high school age and a filtering down to junior high school groups.

The problems in the area of the drug user and addict seem certain, very soon, to present a problem of major proportions to the juvenile courts and the Youth Conservation Commission. No statutory framework has yet been erected to cope with what could be a tidal wave of cases in the future--the *"future"* in this instance being immediately ahead.

Compounding the problem is the fact that wide and influential sectors of the opinion forming media are in conflict as to the causes of the problem and the appropriate responses and remedies. A substantial body of opinion asserts the

unsuitability of the Criminal Justice System to deal with an integral part of the youthful sub-culture that has accepted marijuana as completely as their elders have adopted alcoholic beverages. Some persons argue that criminal controls compound the problem in the same way that prohibition clogged the system during the period of the 1920's and early 1930's.

Another problem in the area of drugs concerns the present narcotic and drug laws, specifically, the Uniform Narcotic Drug Act, Minnesota Statute Chapter 618. The problems arise because the Act makes no distinctions between users and sellers and the type of substance dealt with. Herion and marijuana, and the youthful experimenter and the professional seller are considered equivalents in terms of the penalties prescribed for forbidden acts.

Attempts to provide penalties that fit the crimes currently are undertaken on an ad hoc basis by the individual courts. This situation in turn provides the atmosphere of uncertainty in the law and the possibility of inequality in treatment. Similarly, the situation occasionally fosters both disrespect for the law and doubts in the general public mind concerning the effectiveness of the Criminal Justice System.

Recent legislative interest on the federal and state level indicates that drug and narcotic laws may in the foreseeable future become more discriminating. The question remains with drugs and narcotics, as with alcohol, whether certain offenders (such as occasional or moderate users and addicts) are persons whom the Criminal Justice System should or can effectively and appropriately remedy, control, punish or treat.

THE ALCOHOLIC OFFENDER

The relationship of alcohol to criminal behavior in Minnesota is extensive, but not so well documented so that definite solutions to the problem are apparent. However, rehabilitative alternatives to cold-storage incarceration for alcoholics will be developed in the coming years.

The federal and state courts have taken an interest in the problem of alcoholism and its relationship to criminality. The United States Court of Appeals for the District of Columbia in the **Easter** case and the Fourth Circuit Court's similar decision in the **Driver** case held that a chronic alcoholic could not be convicted of public intoxication. These decisions set the stage for the constitutional test of statutes relating to drinking behavior.

The United States Supreme Court in the **Powell v. Texas** case stated that the definition of what constitutes an alcoholic is so vague as to fail to provide distinctive enough guidelines to overturn public drunkenness statutes, without tampering dangerously with the *"mens rea"* concept in the criminal law as a whole. **Powell v. Texas** upheld the constitutionality of public drunkenness statutes, whereas the **Easter and Driver** decisions had questioned the constitutional validity of such statutes. In Minnesota in a decision rendered in March, 1969, **State v. Charles Fearon,** the Minnesota Supreme Court reversed a decision against Fearon, without reaching a constitutional ruling on the validity of drunkenness laws.

These court decisions indicate that the interest in the problem is great, and also indicate the relationship between the use of alcohol and criminal behavior. The available statistics in Minnesota further support the contention that people using alcohol to excess place a large burden on the Criminal Justice System. For example, in 1968, of the 85,265 arrests made in Minnesota, 33,322 arrests were for the three categories of offenses of drunkenness (17,150 arrests), liquor violations (10,818 arrests) and driving under the influence of alcohol (5,354 arrests).

Although 92.4% of the 10,818 violations termed liquor violations were committed by persons under 25 years of age, the median age of those arrested for drunkenness was 42.3 years. Therefore the offense of drunkenness seems to represent a more chronic social problem, and one in which the traditional Criminal Justice System intervention is least effective.

The Criminal Justice System usually handles the alcoholic as a misdemeanant. The Governor's Commission on Law Enforcement, Administration of Justice, Corrections and Prevention; Task Force on Corrections, pointed out that 55% of the arrests and 49% of the workhouse commitments in Hennepin County were for the offense of drunkenness. Data is now being compiled from all of the jails and lockups throughout the state that will give a clearer picture of the relationship between arrest activity and jailing activity and the use of alcohol.

The data being gathered to identify characteristics of those jailed throughout the state will include the numbers jailed for drunkenness, as well as the numbers jailed for other types of offenses, where alcohol use was evident prior to the commission of the offense. This study is an attempt to create an understanding of the frequency with which alcohol use preceeds the commission of an offense.

Alcoholism is not merely related to misdemeanant criminal activity. Although an accurate statistical picture is not available, a large number of inmates in the state's correctional institutions for delinquents, youthful offenders and adults are there as a result of offenses committed while under the influence of alcohol. Special treatment for alcoholics, through local chapters of Alcoholics Anonymous, is available in most major corrections institutions.

The Alcoholic Offender in the state has a unique problem, but for the most part he is treated like any other offender who has committed a misdemeanor, gross misdemeanor or felony. No special correctional programs or facilities are designed specifically for the alcoholic.

As mentioned before, some institutions make available the services of Alcoholics Anonymous and other volunteer efforts at helping alcoholics. There are also some institutions that have limited staff resources that are devoted to counseling the alcoholic. Most of the treatment for alcoholics who are in the Criminal Justice System, however, is done by agencies that are not formally a part of the system (such as A.A.). There are a few halfway houses and other residential facilities for alcoholics in the state, but they do not differentiate specifically between the Alcoholic Offender and the Alcoholic Non-offender. The primary mission of these facilities is to deal with the problem of alcoholism, and whether or not the alcoholic is an offender is incidental to the program.

Although the problem of excessive use of alcohol places an additional burden on the various agencies of the Criminal Justice System, the System has not developed comprehensive specific and special programs to deal with the Alcoholic Offender. The police, the prosecutors and the courts personnel see the majority of the alcoholics who are offenders. However, correctional facilities, the jails and workhouses in particular, feel the brunt of the Alcoholic Offender care and treatment problem. Until appropriate means of handling and treating these special problem persons exist, the excessive user of alcohol will undoubtedly continue to be one of the most common offenders to come in contact with all phases of the Criminal Justice System.

THE CIVIL DISORDER OFFENDER

In simplest terms the Civil Disorder Defender can be described as one of two types:

- An individual who commits any of the whole array of criminal offenses within the context of a civil disorder;

- An individual who commits an act, deemed criminal under the laws of our state, which specifically relates to participation in a civil disorder itself.

For example, Minnesota law contains several categories of crimes specifically related to civil disorders or mass activity situations including unlawful assembly, riot, presence at unlawful assembly, vagrancy, concealing identity and public nuisance. The Civil Disorder Offender theoretically is treated in the same manner by the Criminal Justice System as any other felon or misdemeanant. However, certain specific practical problems surrounding civil disorder situations indicate the need for special means of handling these offenders.

For purposes of this discussion, with the exception of certain practical problems that will be noted later, perhaps it is sufficient to note that the offender who commits a crime in the civil disorder itself, such as theft or assault, is treated and should be treated in the same manner as an offender committing the same act in an isolated physical and social setting. Similarly, Civil Disorder Offenders of this type are less often and less clearly motivated by social or political considerations. The main thrust, then, of this discussion concerns the offender who is accused or guilty of an offense that arises out of the nature and because of the activity involved in the civil disorder itself.

Theoretically, the prerequisites of apprehension, the process of conviction and the available alternatives for corrective treatment are identical in the case of a Civil Disorder Offender as in the case of another type of offender. Theoretically, the social or political motivations of the offender are irrelevant to the issue of guilt or innocence. Nevertheless, in this particular type of case, the motivation and purpose of the offender is often called into consideration in making a determination as to how far to proceed in the process with such an offender, and what proper treatment or punishment should be meted out to such an individual. Indeed, the social and political considerations in these kinds of cases often raise legal issues that might not be present if the acts in question were not accompanied by the alleged assertion of countervailing individual rights.

The Civil Disorder Offender most likely encounters the Criminal Justice System in the first instance through a direct confrontation with law enforcement personnel. The possibility of private complaints or formal complaints is not eliminated from the situations, but more than likely the confrontation occurs in direct fashion at the moment of the alleged criminal activity. Likewise, the first unique aspect of the treatment of the Civil Disorder Offender takes place at this same moment of confrontation.

The common observation of these situations indicates that the likelihood of rational deliberate action, as well as attention to the details and prerequisites of apprehension and the guarantee of individual rights is diminished in the context in which the confrontation here occurs. The impossibility of thorough adherence to procedures and the rational process of decision-making that occurs at the very

inception of a civil disorder, strongly affects the treatment of the offender or the alleged offender through the remaining portions of the Criminal Justice System.

Because of the numbers of individuals often involved and the other confusion surrounding the circumstances in which civil disorder offenses are committed, substantial practical problems arise that have a severe impact upon the effective operation of the Criminal Justice System as a whole. This fact remains true whether or not the situation is viewed through the eyes of the prosecution function or the defense function when a civil disorder offender reaches a court of law. For example, the lack of opportunity and the impossibility in many cases of retaining and processing proper evidence or in accomplishing adequate identification of individual offenders are often insurmountable problems to the prosecution.

On the other hand, the offender is more likely to have been deprived of the proper process to which he is entitled in our constitutional system due to the lack of physical and human resources to adequately deal with large numbers of apprehensions, detentions, and arraignments. The net result of these many unique elements of the civil disorder situation is a relatively small percentage of convictions from the prosecution point of view and lack of adequate treatment and procession from the defense point of view.

Across the nation and within the State of Minnesota, however, certain projects have been undertaken to eliminate the inequities and the inefficiencies that currently prevail in most mass arrest situations. For example, the VERA Institute of New York City, the operations arm of the Criminal Justice Coordinating Council of that city, has instituted a project to insure more adequate handling of the situations. Included within this project are provisions for special prosecutors, special defense attorneys, additional detention facilities and additional judicial personnel to insure the proper and adequate handling of civil disorder offenders. These detailed provisions along with attempts by police, by photographic and other means, to properly preserve identification and evidentiary matters would appear to provide great possibilities for better handling of mass arrests situations arising out of civil disorders.

An approach to the same problem has been attempted through a grant in Minnesota to Hennepin County. The project funded through this grant incorporates the use of a counselor or investigator in the Hennepin County jails for the purpose of assisting incarcerated persons to contact the public defender or other agencies and services that might be of aid to that person. In addition to aiding these individuals, the presence of such a person might well avoid some further instances of violations of individual rights that interfere with and often eliminate the possibility of an otherwise proper conviction. This person is not available only to Civil Disorder Offenders, but may be of particular value when such events do occur.

As mentioned earlier, the political or social motivation of a Civil Disorder Offender is theoretical and technically irrelevant to the question of guilt or innocence. Nevertheless, our Criminal Justice System, that incorporates a certain amount of discretion to the prosecution function as well as to the criminal court judges and juries, undoubtedly is influenced by the validity and importance of the motivation of specific offenders. If these factors do not play a role in the actual matter of conviction or acquittal, the judges as well as correctional personnel still must consider these factors in determining the proper treatment to be given to such an offender.

Perhaps fundamental to an understanding of the manner in which the Criminal Justice System treates a civil disorder offender is the fact that the rights and duties of individual citizens, as well as the Criminal Justice System itself, are being slowly, and sometimes rapidly, redefined both through court made law and by legislation. Perhaps the most simple question underlying this redefinition is whether or not the Criminal Justice System, as it now stands and as designed to treat the more traditional type of criminal, is adequate to deal fairly with Civil Disorder Offenders of the type whose actions arise out of the very nature of a civil disorder in itself. The issues of semantics and definitions in themselves vastly confuse the whole subject. An emerging area of the law is now in the process of determining the type of control or freedom that should govern these individuals.

THE EXPLOITER OFFENDER

The offenses of exploitation encompass a wide variety of illegal and harmful activities. Indeed many of the acts of the Exploiter Offender, within a broad definition of this category, are not classified as criminal under the existing statutes and laws in the State of Minnesota. Such a broad definition includes persons involved in such activities as consumer fraud and questionable marketing practices, as well as the more traditionally exploitive criminal person engaged in such activities as drug traffic and crimes of compulsion.

The offenders engaged in the activities in this latter group are more readily recognizable, more precisely defined under the law and more susceptible to apprehension, conviction and correction attempts. The persons engaged in the expanding variety of activities just now becoming recognized as exploitive in nature are less recognizable, only recently and partially defined under the law and not necessarily considered criminal. These persons are not readily susceptible to existing techniques for apprehension, conviction and correction. This discussion concerns attempts by the system and needs of the system to deal with this kind of anti-social exploitive behavior now being recognized in wider dimensions.

An attempt to follow the step-by-step methods and contacts of the Criminal Justice System with this latter type of offender sheds little light on the problem itself or the attempts of the system to deal with the problem. To the extent that such an offender violates the existing criminal laws and can be apprehended and dealt with by the system, the person is treated in the same manner and with the same process as an offender of another type.

The offenders engaged in what have been described as the traditional varieties of exploitive activities that the system has long recognized and is to a large extent equipped to deal with, are in fact treated in the same manner as other felons or misdemeanants. These types of activities and persons and the criminal laws applicable to them, will be discussed briefly in the immediately following portions of this discussion. However, the main thrust of this discussion is in the later attempts to characterize the unique nature of, and to some extent the inability of the Criminal Justice System to deal with, the offenders participating in the activities contained within the expanding definitions of exploitive behavior.

Of course, any criminal activity is exploitive in nature. Many of the criminal laws, however, deal with specific types of acts that more readily conform to the characterization of exploitive. Many crimes against persons, including crimes of compulsion, sex crimes, and the like, more readily bear the characteristics of exploitation. Similarly, the criminal laws of our state, to some extent, have recognized the criminal nature of economic exploitation. Economic exploitation, however, reaches the proportion of statutory crime in most instances only when it reaches the proportion of theft and related crimes as defined in the Minnesota Statutes.

The brief treatment here of this type of criminal activity is not intended to minimize the fact that extremely complex and sophisticated, well organized and incredibly costly exploitation of human and economic resources result from the activities of individuals engaged in these criminal activities. Rather, since this discussion is designed to demonstrate the manner in which the Criminal Justice System handles the specific types of offenders, no benefit is derived from reiterating the normal process of handling felons and misdemeanants.

The unique aspects of the Exploiter Offender are those aspects which the Criminal Justice System and the legal system as a whole have only recently taken steps to control. Each of us from day to day encounters a myriad of subtle devices and practices designed to exploit individuals and our society, personally and economically. In spite of attempts in recent years to effectively regulate and control these kinds of practices and activities, the Criminal Justice System leaves persons engaged in such behavior largely untouched.

The system is designed to deal with the more blatant varieties of exploitive behavior discussed earlier, but has not yet devised the means and capacity for controlling this more subtle but, perhaps, more costly brand of activity. The non-criminal remedies available in the civil courts against some of these activities are expensive and often ineffectual, particularly against transient persons or groups.

The issues involved are highly complex in contrast to the problems involved in handling the more traditional types of crime. Indeed, a redefinition of the nature of crime itself is perhaps the first step in approaching control of this expanded variety of exploitive behavior. Various accepted elements of society differ considerably on the question of what should be considered criminally exploitive in our society. For example, a debate between those wishing to protect individuals from their own foolishness, irresponsibility and poor judgment and those advocating an unfettered right to free enterprise and economic gain, leaves legislators and other persons involved in devising and administering the Criminal Justice System in a dilemma as to how society wishes itself to be faulted for a failure to deal adequately with certain types of harmful activity, when the morality or criminality of the same activity is unclear in the philosophy of our society.

For example, one of the few or perhaps the only unusual inroad into the traditional concepts of the nature and regulation of crime under the laws of the State of Minnesota in recent years is within the area of consumer fraud. Statutes designed to define and control certain practices designated as fraud upon the consumer now exist in the State of Minnesota. These statutes seek to curtail certain practices and devices that heretofore, although perhaps thought to be questionable, were not criminal in nature. These laws go beyond the traditional concepts of theft and criminal exploitation at least to some extent.

However, the ambiguity of society's position on these activities is likewise reflected in the statutes. In the first place the restrictions on consumer fraud are not contained within the criminal code of our state. Rather they are contained within the general provisions on the regulation of manufacturers and sales. Secondly, while certain practices are deemed unlawful, no criminal sanctions are imposed for engaging in those activities. The only remedy currently available to those operating to control consumer fraud is the remedy of injunction.

Thus, practices unlawful in nature can theoretically be stopped, but the persons engaged in such practices cannot be punished short of activity that reaches the proportion of actual theft. At least some ineffectiveness is present due to the inherent delays in the judicial process which, although allowing the eventual compulsive cessation of a particular activity, does not accomplish cessation of illegal activities until society has paid some cost.

This discussion, however, is not meant as a critique of such attempted inroads into the nature and control of crime. Rather, the discussion intends only to indicate the ambiguity and the distinctive quality of certain potentially criminal situations. Perhaps society is unwilling to have these activities controlled in the same manner as

normal criminal activities. But at least it is clear that if an expansion of the concept of exploitive behavior is operative; society is not necessarily going to deal with persons engaged in these types of exploitation through the normal criminal process. Therefore, while the Criminal Justice System deals with the offender engaged in traditional exploitive behavior in the same manner as other offenders, the System does not effectively deal with numerous and costly types of exploitive offenders, and has only begun to redefine its purposes and methods in an attempt to control and prevent such exploitation.

THE SEX OFFENDER

The sex offender is considered under a special statutory section, Minnesota Statutes Sections 609.29-609.34, wherein any person over the age of 21 years who is convicted of any of the below listed felony crimes is to be committed by the court to the Commissioner of Public Welfare, Department of Public Welfare to provide social, physical, and mental examination. The felonies that are considered in the sex offender category are: aggravated rape, rape, sodomy, sexual intercourse with a child, indecent liberties and incest. The statute also includes attempted aggravated rape and attempted sexual intercourse with a child.

The sexual offender is handled in the same manner as the felon until such time as the offender is convicted. Then following the extensive examination mentioned above, the offender may be placed in a state hospital for treatment, or be confined in an adult correctional facility according to the sentence imposed by the court. If treated in a state hospital, the court issuing the confinement order must also authorize the offender's release, or he is eligible for parole without court consent after two years of confinement.

If confined to one of the adult corrections facilities, the offender will receive rehabilitative assistance from in house staff. The sex offender, if confined to an adult correction facility in the state, is eligible for parole according to the sentence of the convicting court and the Adult Corrections Commission.

In recognition of the problem in treating the sex offender the 1969 Minnesota Legislature allocated a sum of $280,000 for mental health research. This amount includes monies to be used by the Commissioner of Public Welfare, with the consent and cooperation of the Commissioner of Corrections, to establish and maintain an experimental treatment program for selected consenting sex offenders or psychopathic personalities committed to the control of either commissioner. A report will be furnished on the experimental treatment program to the 1970 legislature.

Sex offenders who are dangerous by reason of such acts may be adjudged psychopathic personalities in probate court. As a matter of practice this is fairly rare. As a practical matter, though not a legal matter, it is almost necessary to have a conviction of a sex offense in order to secure a finding of psychopathic personality. Such persons are committed to the St. Peter Security Hospital and can be restored only by a finding of the committing judge that such person is recovered and is no longer a danger.

THE TRAFFIC OFFENDER

The initial contact of the traffic offender in Minnesota with the Criminal Justice System comes through municipal, county or state traffic officers or through a formal complaint issued by a private citizen. Traffic offenses include a wide variety of acts prohibited by state laws and municipal ordinances.

Except in the case of serious offenses or because of dangerous circumstances, actual physical arrests seldom result from traffic matters, even though the powers of arrest are the same as in other misdemeanor situations. Normally, a traffic offender is issued a citation accompanied by a notice to appear in the appropriate municipal or justice court. Only upon the offender's failure to appear or otherwise dispose of the matter will a warrant issue for his arrest.

In most situations, particularly in urban areas, an offender may dispose of a traffic matter by payment of a fine to a traffic or ordinance violation bureau, or by the indirect payment of a fine through a bail forfeiture. Where such procedures are available, an actual court appearance is necessary, according to prescribed statutory rules, only if the offender's past traffic record is poor or the offense is serious. Of course if the alleged offender wishes to plead not guilty to a charge and proceed to trial or other disposition of the matter, all the rights, duties, and procedures normally present in a criminal matter are available to the defendant.

The Minnesota Highway Department, through its Safety Division, controls the licensing of drivers in the state and also maintains records of traffic offenses on each licensed driver. These records are used by the Department in determining action to be taken based upon its administrative powers to suspend or revoke driving privileges on the basis of driving violations and records. Similarly, these records are also used by the court in determining appropriate sentences.

Severe cases involving repeated offenses, drunk driving, and driving after suspension or revocation of license may result in a jail sentence for the offender. These cases are more apt to take on the proportions of a full scale trial because of the possible consequences to the offender. Except for certain of the serious traffic offenses, the vast bulk of all traffic cases are concluded through mailed fines to traffic violation bureaus, bail forfeitures or pleas of guilty. Sentences usually take the form of fines, revocation or suspension of driving privileges, or the imposition of conditions or prerequisites on the offenders' driving privileges.

GLOSSARY OF TERMS

arraignment	a hearing in court in a criminal matter at which a defendant is informed of the charges against him and is required to enter a plea of not guilty or guilty to the charges.
bail	security given for the due appearance of a person under arrest at an appointed time and court. Such security being given in order to obtain the temporary interim release of such person from custody.
complaint	in criminal law, the formal written charge(s) against person(s) known or unknown sworn to before a magistrate by a peace officer or private complaining witness for the purpose of commencing the process of prosecution of the person(s) so charged. The document must also recite sufficient facts which, if proven, constitute the alleged offense(s) by the person(s) so charged.
defacto	as a matter of fact, actuality, or reality, in contrast to as a matter of law.
indictment	a formal accusation or charge in writing found upon evidence by a grand jury, sworn to and presented to the court, alleging that person(s) named therein has committed a crime(s); said indictment being for the purpose of commencing prosecution of the person(s) so charged.
information	a formal accusation or charge of a crime(s) against a person(s) differing from an indictment only in being presented by the prosecuting (county) attorney upon his oath rather than by a grand jury upon its' oath.
negotiated plea	generally, a plea by an accused to a crime differing from the crime(s) with which he is charged (usually a lesser offense); such plea being the result of discussions and agreement between the prosecution and defense that the alternative charge is more appropriate to the act or acts committed.
parole	the release of a person from imprisonment subject to certain conditions and supervision prior to the expiration of the sentence under which the person is imprisoned.
personal recognizance	the promise of an accused person or another to return the accused person to court at an appointed time and place; made, and accepted by a court, in lieu of bail pending criminal proceedings against the accused person.

preliminary hearing	in criminal law, a hearing before a magistrate or judge given to a person accused of or charged with a crime; prior to arraignment or actual trail, to determine whether sufficient evidence exists to establish probable cause that said person(s) committed said act(s) and should, therefore, be bound over to district court for trial. Such matters as the right to and amount of bail, etc. may also be considered at the hearing.
probable cause	in criminal law, an apparent state of facts based upon reasonable evidence or inquiry which, if unexplained or uncontradicted, would warrant a prudent and cautious person believing that an accused person is guilty of the crime charged.
probation	an alternative to imprisonment or other penalty to a convicted offender by which the sentence is suspended and the offender is given his freedom during his good behaviors and subject to such conditions and supervision as the court may prescribe.
tab charge	a maintenance charge carried on a court docket upon which the accused is arraigned when no formal written charge has been prepared or demanded.
trial de novo	a new trial or retrial in a higher or appelate court in which the whole case is presented as if no trial whatever had been held in the court below.
warrant	a written order issued and signed by a magistrate or judge, addressed to a peace officer, directing him to arrest the accused person named therein and bring him before the court to answer for or be examined touching upon some crime which the person is charged with having committed.