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The Right to Counsel in Juvenile Court: Law Reform to Deliver Legal Services and Reduce Justice by Geography

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Barry Feld and Shelly Schaefer, *The Right to Counsel in Juvenile Court: Law Reform to Deliver Legal Services and Reduce Justice by Geography*, 9 CRIMINOLOGY & PUB. POL'Y 327 (2010), *available at* https://scholarship.law.umn.edu/faculty_articles/1007.

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RESEARCH ARTICLE

JUVENILES' RIGHT TO COUNSEL

The right to counsel in juvenile court

Law reform to deliver legal services and reduce justice by geography

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Research Summary

The U.S. Supreme Court in In re Gault *granted delinquents the right to counsel in juvenile courts. Decades after* Gault, *efforts to provide adequate defense representation in juvenile courts have failed in most states. Moreover, juvenile justice administration varies with structural context and produces justice-by-geography. In 1995, Minnesota enacted juvenile law reforms, which include mandatory appointment of counsel. This pre- and post-reform legal impact study compares how juvenile courts processed youths before and after the statutory changes. We assess how legal changes affected the delivery of defense services and how implementation varied with urban, suburban, and rural context.*

Policy Implications

We report inconsistent judicial compliance with the mandate to appoint counsel. Despite unambiguous legislative intent, rates of representation improved for only one category of offenders. However, we find a positive reduction in justice by geography, especially in rural courts. Given judicial resistance to procedural reforms, states must find additional strategies to provide counsel in juvenile courts.

The National Juvenile Court Data Archive at the National Center for Juvenile Justice (Pittsburgh, PA) provided the data used in the study. The Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, supported the construction of the data files. I recieved exceptional cooperation and assistance in assembling and organizing the data files from Dr. Howard Snyder, NCJJ Director, Dr. Anne Stahl, and Mr. Terry Finnegan, NCJJ Computer Programmer. I am very grateful to the following colleagues who generaously provdied constructive critiques of an earlier draft of this article: Donna M. Bishop, Eugene Borgida, Elizabeth H. Boyle, George Burrus, Julia Feld, Kimberly Kempf-Leonard, Joachim Savelsberg, Anne Stahl, Christopher Uggen, and Mike Vuolo.
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Keywords
juvenile justice, right to counsel, justice by geography

Progressive reformers who created the juvenile court used informal procedures to adjudicate delinquents and to impose rehabilitative dispositions in children's "best interests" (Rothman, 1980; Schlossman, 1977). The U.S. Supreme Court in *In re Gault* (1967; hereafter referred to as *Gault*) granted delinquents procedural safeguards, which included the right to counsel, because of the gap between juvenile courts' rehabilitative rhetoric and punitive reality. *Gault's* increased procedural formality legitimated punishment, contributed to greater severity in juvenile sentencing practices, and made providing adequate safeguards all the more imperative (Feld, 1988a, 2003b).

Since *Gault* (1967), juvenile courts increasingly have converged with criminal courts. But most states do not provide delinquents with important adult criminal procedural safeguards, such as the right to a jury trial (Feld, 2003a). By contrast, states treat juveniles procedurally just like adults when formal equality places them at a practical disadvantage. Most states use the adult standard—"knowing, intelligent, and voluntary" under the "totality of the circumstances"—to gauge juveniles' waivers of Miranda rights and their right to counsel at trial (*Fare v. Michael C.*, 1979). Most states do not use any special measures to protect youths from their own immaturity, such as a mandatory appointment of counsel (Feld, 1984, 2006). Juveniles differ from adults in their adjudicative competence as well as in their understanding of and their ability to exercise legal rights (Grisso, 1980, 1981; Grisso et al., 2003). As a result, formal equality results in practical inequality, and lawyers represent delinquents at much lower rates than they do criminal defendants (Burrus and Kempf-Leonard, 2002; Feld, 1988b, 1991; Harlow, 2000; Jones, 2004).

Although statutes, procedural rules, and court decisions apply equally throughout a state, juvenile justice administration varies with urban, suburban, and rural context and produces justice by geography (Bray, Sample, and Kempf-Leonard, 2005; Burrus and Kempf-Leonard, 2002; Feld, 1991, 1993; Guevara, Spohn, and Herz, 2008). Lawyers appear more often in urban courts, which tend to be more formal, bureaucratized, and due-process-oriented (Burrus and Kempf-Leonard, 2002; Feld, 1991, 1993). In turn, more formal courts place more youths in pretrial detention and sentence them more severely. Rural courts tend to be procedurally less formal and to sentence youths more leniently (Burrus and Kempf-Leonard, 2002; Feld, 1991).

This article assesses law reforms in Minnesota to improve the delivery of legal services in juvenile courts. First, we examine the procedural assumptions of juvenile courts and the struggle to implement *Gault's* (1967) mandate to provide counsel. It describes judicial resistance to the provision of legal services and geographic variability in the presence of lawyers. Then we examine the process of law reform in Minnesota. As part of a nationwide trend to "get tough" on youth crime, in 1995, Minnesota adopted substantive juvenile justice reforms—offense-based waiver and blended sentencing laws as well as an expanded use of delinquency convictions to enhance

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criminal sentences (Feld, 1995; Podkopacz and Feld, 2001). To complement these substantive changes, the new law provided greater procedural safeguards such as a mandatory appointment of counsel for youths charged with felonies and a consultation with a lawyer by youths charged with misdemeanors. Within months after the law took effect, and as a cost-saving strategy to avoid providing counsel, Minnesota decriminalized many misdemeanors, converted them into status offenses for which judges could not impose out-of-home placements, and eliminated juveniles' right to counsel (Weldon, 1996). The next section describes the data used to conduct this pre- and postreform legal impact study. Then we compare how juvenile courts in Minnesota processed 30,270 youths in 1994—the year before the statutory changes—with how they processed 39,369 youths in 1999 after they implemented the statutory changes. We assess changes in the delivery of legal services and how implementation varied by urban, suburban, and rural context. We analyze the legislative experiment with judicious nonintervention, which converts misdemeanors into petty offenses and restricts judges' sentencing authority to deny youth counsel. We assess the effects of law reform and the broader policy implications.

Right to Counsel in Juvenile Court

Juvenile courts melded a new ideology of childhood with new theories of social control, introduced a judicial-welfare alternative to the criminal justice system, and enabled the state, as *parens patriae*, to monitor ineffective child-rearing (Feld, 1999, 2003b). Progressive child-savers described juvenile courts as benign, nonpunitive, and therapeutic agencies (Platt, 1977; Schlossman, 1977; Sutton, 1988). The *parens patriae* doctrine legitimated state intervention to supervise children and supported claims that proceedings were civil rather than criminal. The status jurisdiction of juvenile courts enabled them to control noncriminal misbehavior such as sexual activity, truancy, or immorality (Platt, 1977; Schlossman, 1977; Sutton, 1988). Juvenile courts rejected criminal procedural safeguards and used informal procedures, denied juries, excluded lawyers, and conducted confidential hearings (Rothman, 1980; Tanenhaus, 2004).

The U.S. Supreme Court in *Gault* (1967) rejected progressives' rehabilitative rhetoric and candidly appraised claims of juvenile courts' proponents against high recidivism rates, the stigma of a delinquency label, and the arbitrariness of the process. The Court concluded that juvenile courts must provide fundamentally fair procedures that include notice of charges, a hearing, assistance of counsel, an opportunity to confront and cross-examine witnesses, and the privilege against self-incrimination (Feld, 1984). Although *Gault* likened the seriousness of a delinquency proceeding to a felony prosecution, the Court relied on the Fourteenth Amendment Due Process Clause rather than the Sixth Amendment, which protects adult defendants' right to counsel (*Gideon v. Wainwright*, 1961). The Court did not mandate the appointment of counsel and only required a judge to advise the child and parent of the right to counsel and, if indigent, to have counsel appointed (*Gault,* 1967).

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Presence of Counsel in Juvenile Courts

When the Court decided *Gault* (1967), lawyers seldom appeared in juvenile courts (Note, 1966). Although states amended their juvenile codes to comply with *Gault*, they failed actually to deliver legal services. Evaluations of initial compliance with *Gault* found that most judges did not advise juveniles of their rights and that most did not appoint counsel (Canon and Kolson, 1971; Duffee and Siegel, 1971; Ferster, 1971; Lefstein, Stapleton, and Teitelbaum, 1969; Stapleton and Teitelbaum, 1972). Studies in several jurisdictions in the 1970s and early 1980s reported that juvenile courts failed to appoint counsel for most juveniles (Aday, 1986; Bortner, 1982; Clarke and Koch, 1980; Flicker, 1983; Kempf-Leonard, Pope, and Feyerherm, 1995). Research in Minnesota in the mid-1980s reported that most youths appeared without counsel; the rates of representation varied widely in urban, suburban, and rural counties; and judges removed from their homes and confined many unrepresented youths (Feld, 1988b, 1989, 1991, 1993). Feld's (1988b) comparative study of the delivery of legal services in six states reported that only three of them appointed counsel for most juveniles. Studies in the 1990s described the continuing failure of judges to appoint lawyers for many youths who appeared before them (Burrus and Kempf-Leonard, 2002; Guervara, Spohn, and Herz, 2004; U.S. General Accounting Office [GAO], 1995). In 1995, the GAO (1995) found that rates of representation varied widely among and within states and that juvenile courts tried and sentenced many unrepresented youths.

In the mid-1990s, the American Bar Association (ABA) published two reports on juveniles' legal needs. *America's Children at Risk* (ABA, 1993) reported that many youths in the juvenile justice system lacked counsel and that many lawyers who represented them lacked adequate training and failed to provide competent representation. *A Call for Justice* (ABA, 1995) focused on the quality of juvenile defense lawyers, reported that many youths appeared without an attorney, and concluded that many attorneys failed to appreciate the complexities of representing juvenile defendants. Since the late 1990s, the ABA and the National Juvenile Defender Center have conducted a series of state-by-state assessments and report that many, if not most, juveniles appear without counsel and that lawyers who do represent youth often provide substandard representation because of structural impediments to effective advocacy, such as inadequate support services, heavy caseloads, and a lack of investigators or dispositional advisors (e.g., Bookser, 2004; Brooks and Kamine, 2004; Celese and Puritz, 2001; Puritz and Brooks, 2002; Puritz, Scali, and Picou, 2002). Moreover, regardless of how inadequately lawyers perform, juvenile courts seem incapable of correcting their own errors (Berkheiser, 2002). Defense attorneys rarely, if ever, appeal adverse decisions and often lack a record with which to challenge an invalid waiver of counsel (Berkheiser, 2002; Bookser, 2004; Crippen, 2000; Harris, 1998; Puritz and Shang, 2000).

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Waivers of Counsel in Juvenile Court

Several reasons are available as to why so many juveniles appear without counsel. Public-defender legal services might be inadequate or absent in nonurban areas (ABA, 1995). Judges might give cursory advisories of the right to counsel, imply that a rights colloquy and waiver are just legal technicalities, and readily find waivers of counsel to ease the administrative burdens of courts (ABA, 1995; Berkheiser, 2002; Bookser, 2004; Cooper, Puritz, and Shang, 1998). In other instances, judges might not appoint counsel if they expect to impose a noncustodial sentence (Burrus and Kempf-Leonard, 2002; Feld, 1984, 1989; Lefstein et al., 1969).

A waiver of counsel is the most likely reason that so many juveniles are unrepresented (ABA, 1995; Berkheiser, 2002; Cooper et al., 1998; Feld, 1989). In most states, judges gauge juveniles' waivers of rights by assessing whether they were "knowing, intelligent, and voluntary" under the "totality of the circumstances" (Berkheiser, 2002; *Fare v. Michael C.*, 1979; *Johnson v. Zerbst*, 1938). *Fare v. Michael C.* (1979) rejected special procedures for youths and endorsed the adult standard to evaluate juveniles' waivers of Miranda rights (Rosenberg, 1980). Judges use the same standard to evaluate juveniles' waivers of counsel at trial (Berkheiser, 2002; Feld, 1989, 1993). Judges consider characteristics such as age, education, I.Q., and prior contact with law enforcement while enjoying broad discretion to decide whether a youth understood and waived his or her rights (Feld, 1984, 1989, 2006). In most states, juveniles might waive counsel without consulting with either a parent or an attorney (Berkheiser, 2002; Feld, 2006). However, judges frequently failed to give any counsel advisory, often neglected to create any record of a waiver colloquy, and readily accepted waivers from manifestly incompetent children (Berkheiser, 2002).

Research on juveniles' adjudicative competence and ability to exercise Miranda rights strongly questions whether they can make knowing, intelligent, and voluntary waivers. Many juveniles do not understand a Miranda warning or counsel advisory well enough to make a valid waiver (Grisso, 1980, 1981; Grisso et al., 2003). Although older juveniles understood Miranda warnings about as well as adults, substantial minorities of both groups failed to grasp at least some elements of the warning (Grisso, 1997). Even youths who understand the abstract words of a Miranda warning or advisory of counsel might not appreciate the function or importance of rights as well as adults (ABA, 1995; Grisso, 1980, 1997; Grisso et al., 2003).

Research on adolescents' adjudicative competence raises more questions about their capacity to exercise legal rights (Bonnie and Grisso, 2000; Grisso et al., 2003). To be competent to stand trial, a defendant must be able to understand proceedings, make rational decisions, and share information with counsel (*Drope v. Missouri*, 1975; *Dusky v. United States*, 1960). Although mental illness or retardation produce disabilities that impair the competence of defendants, the developmental limitations of youths compromise their ability to understand proceedings, make decisions, and assist counsel (Grisso et al., 2003; Scott and Grisso, 2005). Research reports significant age-related differences between adolescents' and adults' adjudicative competence, legal understanding, and quality of judgment, which affects their ability to exercise rights or waive counsel (Grisso et al., 2003; Redding and Frost, 2001).

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Justice by Geography in Juvenile Courts

Although the same statutes, court decisions, and procedural rules apply throughout a state, most states administer juvenile courts at the county or judicial district level, and justice administration varies with locale (Bray et al., 2005; Burrus and Kempf-Leonard, 2002; Feld, 1991; GAO, 1995; Guervara et al., 2004; Guevara et al., 2008). For example, urban juvenile courts tend to be more formal, bureaucratized, and due-process-oriented; they place more youths in pretrial detention; and they sentence offenders more severely than do suburban or rural courts (Feld, 1991). No reasons exist to believe that rural youths are more competent than urban juveniles to waive legal rights, but rural judges appoint attorneys far less often than do their more formal, urban counterparts (Burrus and Kempf-Leonard, 2002; Feld, 1991). Attorneys in Minnesota appeared with 63% of urban youths compared with 55% of suburban juveniles and only 25% of rural youths (Feld, 1991). In Missouri, attorneys appeared with 73% of youths in urban courts as contrasted with only 25% in suburban courts and 18% in rural settings (Burruss and Kempf-Leonard, 2002). The GAO (1995) reported that rural youths were four times more likely to appear without counsel as their urban counterparts.

From Substantive Irrationality to Formal Rationality

Weber's (1967) sociology of law distinguished between substantive and formal irrationality and rationality, depending on the processes, criteria, and sources of the authority employed. Lawmaking and lawfinding are "substantively irrational" to the "extent that [the] decision is influenced by concrete factors of the particular case as evaluated upon an ethical, emotional, or political basis rather than by general norms" (Weber, 1967: 63). Weber (1967: 213) used the term "Khadi justice" to describe Islamic judges in the marketplace deciding disputes on a case-by-case basis without reference to explicit rules or general legal principles. The progressive juvenile court provides a premier example of "Khadi justice" (Matza, 1964). Judges have used informal procedures and have based their decisions in each case on the child's "best interests" (Matza, 1964). By contrast, lawmaking and lawfinding are formally rational to the "extent that in both substantive and procedural matters, only unambiguous general characteristics of the facts of the case are taken into account" (Weber, 1967: 63). Formal rationality in law uses formal procedures and applies abstract, universal rules to decide the case. The U.S. Supreme Court's decision in *Gault* (1967) to extend procedural safeguards to delinquents reflected an effort to impose formal legal rationality on a substantively irrational institution. Despite *Gault*'s mandate, efforts to provide counsel and formalize procedures have failed much more often than they have succeeded.

Courts, as complex organizations, develop informal practices to manage and dispose of caseloads expeditiously (Feeley, 1983). Informal relationships among nominally adversarial courtroom actors—judges, prosecutors, and defense counsel—enables the workgroup to process cases efficiently and cooperate to reduce organizational conflict and creates incentives to modify or resist reforms (Eisenstein and Jacob, 1977). Analyses of externally imposed juvenile court

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reforms report that they do not alter administrative routines dramatically (Hagan, Hewitt, and Alwin, 1979). Juvenile court workgroups might be even more resistant to change than criminal justice actors because of their collaborative ideology and shared substantive commitment to the "best interests" of the child (Gebo, Stracuzzi, and Hurst, 2006). Juvenile court judges might have internalized the substantive "best interests" framework and likely would resist *Gault*'s (1967) imposition of lawyers and adversarial procedures, which constrain their discretion and autonomy. Some of the observed differences in justice by geography might reflect differences in the ideological orientation of courtroom workgroups (e.g., due process or "best interests"; Stapleton, Aday, and Ito, 1982).

This study enables us to assess judicial compliance with or judicial resistance to formal procedural reforms. Because judges have to implement these changes, this study enables us to identify conformity with or deviations from the legislature's intent. We would expect judges to resist procedural formalization if it adversely affects their caseload management or constrains their autonomy and discretion.

Law Reform to Provide Counsel and Reduce Justice by Geography

Although a few states require juveniles to consult with a lawyer (e.g., *D.R. v. Commonwealth*, 2001), most allow youths to waive counsel unaided (Berkheiser, 2002). Like most states, Minnesota has struggled to provide representation for delinquents. Studies in the mid-1980s reported that most youths appeared without counsel and found significant intrastate variations in rates of representation, ranging from 90% in some counties to less than 10% in others (Feld, 1989, 1991). Judges removed from home or confined in institutions a substantial minority of unrepresented youths (Feld, 1989, 1993).

In 1990, the Minnesota Supreme Court appointed the Juvenile Representation Study Committee (JRSC) to examine access to counsel and to recommend policy changes. The Study Committee found that most juveniles appeared without counsel and reported geographic disparities in the delivery of legal services (Feld, 1995; JRSC, 1991). It recommended mandatory, nonwaivable appointment of counsel for juveniles charged with felony or gross misdemeanor offenses and in proceedings that lead to out-of-home placements (JRSC, 1991). It recommended that juveniles charged with misdemeanors consult with counsel prior to any waiver. Because counties used different methods to provide and pay for juvenile defense services, the JRSC could not estimate either current expenditures or predict the fiscal impact of its recommendations, and the Minnesota Legislature did not enact its proposals (Feld, 1995).

Mandating Representation and Vetoing Funding

In 1992, the Minnesota Supreme Court, Governor, and Legislature created the Juvenile Justice Task Force (hereafter referred to as the "Task Force") to recommend policies on transfer to criminal court, juvenile court sentencing practices, use of delinquency convictions to enhance criminal sentences, and increased procedural safeguards (Feld, 1995). A Minnesota Supreme Court Justice chaired the Task Force, which included urban, suburban, and rural juvenile judges;

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prosecutors, public defenders, and legislators; as well as court services personnel and a juvenile justice legal scholar (Feld, 1995). The Minnesota Legislature unanimously enacted changes in waiver criteria and procedures, created a new form of blended sentencing—extended jurisdiction juvenile prosecutions—that combined juvenile and criminal court sentencing options, and expanded the use of delinquency convictions to enhance criminal sentences (Feld, 1995, 2003a; Podkopacz and Feld, 2002).

The increased punitive sanctions prompted the Minnesota Legislature to expand the procedural safeguards of juvenile courts. The Task Force confirmed an inadequate delivery of legal services and recommended that judges appoint counsel for juveniles facing felony charges or out-of-home placement (Feld, 1995). Although youths charged with a misdemeanor could waive counsel, the Task Force recommended that he or she consult with counsel prior to any waiver. Because the Juvenile Representation Committee (1991) could not estimate its proposal's costs, the Task Force calculated the additional costs of representation at about $5.5 million (Feld, 1995).

The 1994 Minnesota Legislature enacted the Task Force's procedural recommendations without change and provided, in part, that:

> Before a child who is charged by delinquency petition with a misdemeanor offense waives the right to counsel or enters a plea, the child *shall consult* in person with counsel who shall provide a full and intelligible explanation of the child's rights. The court *shall appoint* counsel, or stand-by counsel if the child waives the right to counsel for a child who is:
> (1) charged by delinquency petition with a gross misdemeanor or felony offense; or
> (2) the subject of a delinquency proceeding in which out-of-home placement has been proposed (Minnesota Statute §260.155(2) (1995) (emphasis added).

The newly drafted Rules of Procedure made appointment of counsel or stand-by counsel mandatory in cases involving felony charges or out-of-home placement (Minnesota Rules of Juvenile Proceedings 3.02 [1995]). The law required any delinquent charged with a misdemeanor to meet with a lawyer prior to any waiver (Feld, 1995). Even if a child charged with a misdemeanor waived counsel, then a judge still "*may appoint* stand-by counsel to be available to assist and consult with the child at all stages of the proceedings" (Minnesota Rules of Juvenile Proceedings 3.02(2) [1995]). As another incentive to appoint counsel, court rules prohibited judges from considering prior misdemeanor convictions obtained without counsel in subsequent probation, contempt, or home-removal proceedings (Feld, 1995; Minnesota Rules of Juvenile Proceedings 3.02 Subd. 3 [1995]). The Minnesota Legislature replaced the county-by-county patchwork method of delivering legal services with a statewide public defender system authorized to represent youths in delinquency and extended jurisdiction proceedings (Minnesota Statute §611.15 (1995)).

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Importantly, the Minnesota Legislature appropriated funds to implement the new law. The Task Force estimated that a full-representation defender system would cost an additional $5.5 million. The Minnesota Legislature appropriated $2.65 million for the initial 6-month period with annual appropriations thereafter (Feld, 1995). On May 5, 1994, Minnesota Governor, Arne Carlson, signed the Juvenile Crime Bill into law and simultaneously *line-item vetoed* the appropriations necessary to implement it (Feld, 1995). He mandated appointment of counsel, vetoed funds to meet that obligation, and imposed enormous financial and administrative burdens on public defenders, whose caseloads increased by 150% or more (Feld, 1995; Weldon, 1996).

Decriminalizing Misdemeanors and Judicious Nonintervention

The law took effect on January 1, 1995, and within months, caseload increases overwhelmed public defenders. The same number of legal staff tried to represent substantially more clients without additional resources (Weldon, 1996). In light of the Governor's veto, legislators sought to reduce public defender caseloads rather than to appropriate more funds (Weldon, 1996). In March 1995, legislators enacted a creative solution and decriminalized many common misdemeanors, such as shoplifting, vandalism, larceny, and so on. The law retained delinquency jurisdiction and out-of-home placement sanctions for serious misdemeanors but relabeled most misdemeanors as petty offenses, that is, status offenses (Minnesota Statute § 260.015 Subd. 21(b) (1995). The law prohibited out-of-home placement sentences for status offenders (Minnesota Statute § 260.195 (3) (1995) West, 1995). Judges could impose fines, community service, probation, restitution, or out-patient drug or alcohol treatment, but they could not remove status offenders from their home. By decriminalizing misdemeanors and barring custodial sanctions, the Minnesota Legislature sought to eliminate status offenders' right to counsel (Weldon, 1996).

United States Supreme Court decisions bolstered the strategy to decriminalize misdemeanors, to bar out-of-home placement of status offenders, and thereby to eliminate their right to counsel. *Gideon v. Wainwright* (1963) applied the Sixth Amendment's guarantee of counsel to state felony proceedings. Although *Gault* (1967) relied on the rationale of *Gideon*, the Court based delinquents' right to counsel on the Fourteenth Amendment's Due Process Clause rather than on the Sixth Amendment. In *Argersinger v. Hamlin* (1972), the Court held that a state must appoint counsel for an indigent adult defendant charged with *and* imprisoned for a misdemeanor. *Argersinger* left unclear whether the right to counsel was attached because of the penalty authorized or the actual sentence imposed. *Scott v. Illinois* (1979) held that the sentence the judge actually imposed rather than the one authorized by the statute determined whether the state must appoint counsel. Justice Brennan dissented in *Scott* and argued that the right to counsel hinged on the sentence authorized. However, Brennan (*Scott*, 1979: 388–389) noted that *Scott*'s actual imprisonment rationale would encourage states to decriminalize offenses to avoid providing counsel:

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> It may well be that adoption by this Court of an "authorized imprisonment" standard would lead state and local governments to re-examine their criminal statutes. A state legislature or local government might determine that it no longer desired to authorize incarceration for certain minor offenses in light of the expense of meeting the requirements of the Constitution. In my view this re-examination is long overdue. In any event, the Court's "actual imprisonment" standard must inevitably lead the courts to make this re-examination, which plainly should more properly be a legislative responsibility.

Because *Scott* prohibited incarceration without representation, judges could deny counsel to adults in misdemeanor proceedings as long as they did not order confinement. Based on *Scott*'s rationale, the Minnesota Legislature could bar out-of-home placement of status offenders and thereby withhold the right to counsel (Weldon, 1996).

Although fiscal constraints drove Minnesota's decriminalization strategy, they produced policy innovations long advocated by juvenile justice reformers. Contemporaneously with *Gault* (1967), the President's Commission on Law Enforcement and Administration of Justice (1967a, 1967b) proposed a two-track juvenile justice system in which states formally adjudicated youths charged with serious crimes and handled informally minor and status offenders (President's Crime Commission, 1967b). The Crime Commission and other analysts recommended policies of judicious nonintervention (1967b), diversion (Lemert, 1971), and even radical nonintervention (Schur, 1973) to avoid stigmatizing youths. These recommendations reflected concerns of labeling theorists about the stigmatic consequences of delinquency adjudications and trepidation about the iatrogenic effects of juvenile court intervention in minor cases (Sanborn and Salerno, 2005). By the mid-1970s, these rationales led to reforms like the federal Juvenile Justice and Delinquency Prevention Act (1974) to divert and deinstitutionalize status offenders (Feld, 1999).

We examine the impact of these complementary legal changes. How did mandating counsel for youths charged with felonies and relabeling many misdemeanors as status offenses affect the delivery of legal services? Did rates of representation of those youths eligible for appointed counsel increase? Did the law reduce the prevalence of justice by geography, especially for youths in rural counties? Did judges comply with restrictions on the appointment of counsel for youths charged with status offenses? We answer these questions in the Findings and Analysis section.

Data

We used data based on all delinquency and status offense petitions filed in 1994 (the year before the law changed) and in 1999 (after the statutory change) to allow a period for the juvenile courts to implement the reforms. The Minnesota Legislature did not enact any other significant changes in the juvenile code between the 1995 Juvenile Crime Law and decriminalization amendment and 1999. [1] Before and after the enactment of the 1995 law, members of the

1. See Minnesota Statutes, amended, 1996 c. 408 Art. 6 § 2 and 5; 1997 c. 239 art 6 § 19; 1998 c 367 art 10 § 5.

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Juvenile Justice Task Force and the Minnesota Supreme Court undertook efforts to educate the judiciary, prosecutors and defense lawyers, as well as the public about the proposed substantive changes. During the 1994 legislative process, Task Force members—which included judges, prosecutors and public defenders, as well as legislators—met regularly with lawmakers and juvenile justice stakeholders and garnered editorial support for the proposals (Feld, 1995). A 6-month gap extended between the enactment of the law (May 5, 1994) and its effective date (January 1, 1995) (Feld, 1995). During this period, the Minnesota Supreme Court empan-elled a Juvenile Court Rules Advisory Committee chaired by the Supreme Court Justice who headed the Task Force to draft rules of procedure to implement the statutory changes. During this interim period, the Justice made several presentations to the state judiciary and continu-ing judicial education programs that described the impending changes. The President of the Minnesota County Attorneys Association and the State Public Defender, both of whom served on the Task Force, conducted several educational programs for their members. On August 29, 1994, the legal-scholar member of the Task Force, who subsequently served as coreporter for the Supreme Court Rules Committee, gave the plenary address at the annual meeting of the Criminal Justice Institute—Minnesota's continuing legal education program for prosecutors, defense counsel, and judges—and conducted several workshops to inform practitioners of the impending changes (Feld, 1995). Thus, juvenile court judges and practitioners were well aware of the changes mandated by the new law. These data provide a unique opportunity to conduct a natural, pre- and postreform impact study (Campbell and Ross, 1968).

Although prosecutors or court personnel close many referrals with dismissal, diversion, or informal probation, after a county attorney files a petition to initiate the process formally, county court administrators enter data on petitioned delinquency and status offense cases into the Minnesota Court Information System (MnCIS). MnCIS case-specific data include the youth identification number, age, sex, and race; date and source of the referral; offense(s); representation by counsel; and court processing information each time a court activity or disposition occurs. Courts use this information to schedule hearings, maintain calendars, and monitor cases, which are reliable, business-record data.

Minnesota provides annual MnCIS data files to the National Juvenile Court Data Archive (NJCDA) at the National Center for Juvenile Justice (NJCDA, 2007). The NJCDA receives data annually from the juvenile justice systems of 38 states, it cleans and verifies the submitted data, and it generates standardized case-level data files. The NJCDA developed a 78-offense coding protocol to convert different states' delinquency and status offense data into a uniform format. This standard format permits cross-state comparisons and national aggregation of states' juvenile court data. We recoded the NJCDA 78 offenses to correspond with Minnesota's clas-sifications of felonies, gross misdemeanors, misdemeanors, and status offenses.

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The MnCIS–NJCDA unit of count ordinarily is *case disposed*.[2] For our analyses, the NJCDA converted annual MnCIS case-based petition data into individual youth-based data files for 1994 and 1999. Each youth receives a unique identifying number that juvenile courts use for subsequent appearances. The NJCDA merged a youth's most recent petition in the current year (1994 and 1999) with the annual data files of two previous calendar years (1992 with 1993 and 1997 with 1998). Matching youths' identification numbers across years enabled us to reconstruct the prior records of petitions, adjudications, and dispositions of juveniles. We classified youths based on the most serious charge petitioned. Data reflect youths' most serious current referral and prior petitions, adjudications, and dispositions for two or more preceding years.

Scott (1979) and the statute require judges to appoint counsel for youths whose sentence will affect their residential or custody status. We used out-of-home placement to measure the severity of disposition. Out-of-home placement includes dispositions that remove a child from his or her home and place him or her in a group home, foster care, in-patient psychiatric or chemical dependent treatment facility, or a secure institution such as a county home school or state training school. Although placements in a foster or group home and a training school are qualitatively difference experiences, the law requires judges to appoint counsel for any disposition that affects a youth's out-of-home residential status. We used census definitions of Standard Metropolitan Statistical Area (SMSA) and youth-population density to classify counties as urban, suburban and small urban, or rural.[3,4,5]

2. Each case represents a petition filed for a new delinquency or status offense, regardless of the number of violations alleged. A case is disposed when the juvenile court takes some definite action on the petition (e.g., dismisses a case, sets a hearing date, adjudicates a youth, refers him or her to a treatment program, etc.). Disposed does not mean that the court closed or terminated contact with a youth but only that it took some action. A youth might be referred to juvenile court several different times during a calendar year, and each petition comprises a separate case. As a result, juvenile courts might file several petitions against youths for different referrals, and each petition might allege one or more offenses. Multiple referrals of a juvenile might overstate the number of youths against whom courts file petitions, whereas multiple charges in a single petition might understate the volume of delinquency in a county. The case disposed unit of count does not reflect either the total number of individual youths whom courts process or the number of separate offenses juveniles commit.
3. Urban counties were located within an SMSA, had one or more cities of 100,000 inhabitants, and had a juvenile population of at least 50,000 youths aged 10–17 years. By these criteria, Hennepin County (Minneapolis) and Ramsey County (St. Paul) are urban counties.
4. We classified counties as suburban or small urban if they were located within a metropolitan SMSA (suburban) or if they were located within their own SMSA (small urban), they had one or more cities of 25,000 to 100,000, and a juvenile population aged 10–17 years of more than 7,500 but less than 50,000 youths. Eight counties met these criteria. The Twin Cities suburban counties include the following: Anoka, Dakota, Scott, Washington, and Wright counties. The small urban counties and their principle cities include the following: Olmsted (Rochester), St. Louis (Duluth), and Stearns (St. Cloud).
5. We classified Minnesota's remaining 77 counties as rural because they were located outside of an SMSA, had no principal city of 25,000 or greater, and had fewer than 7,500 juveniles aged 10–17.

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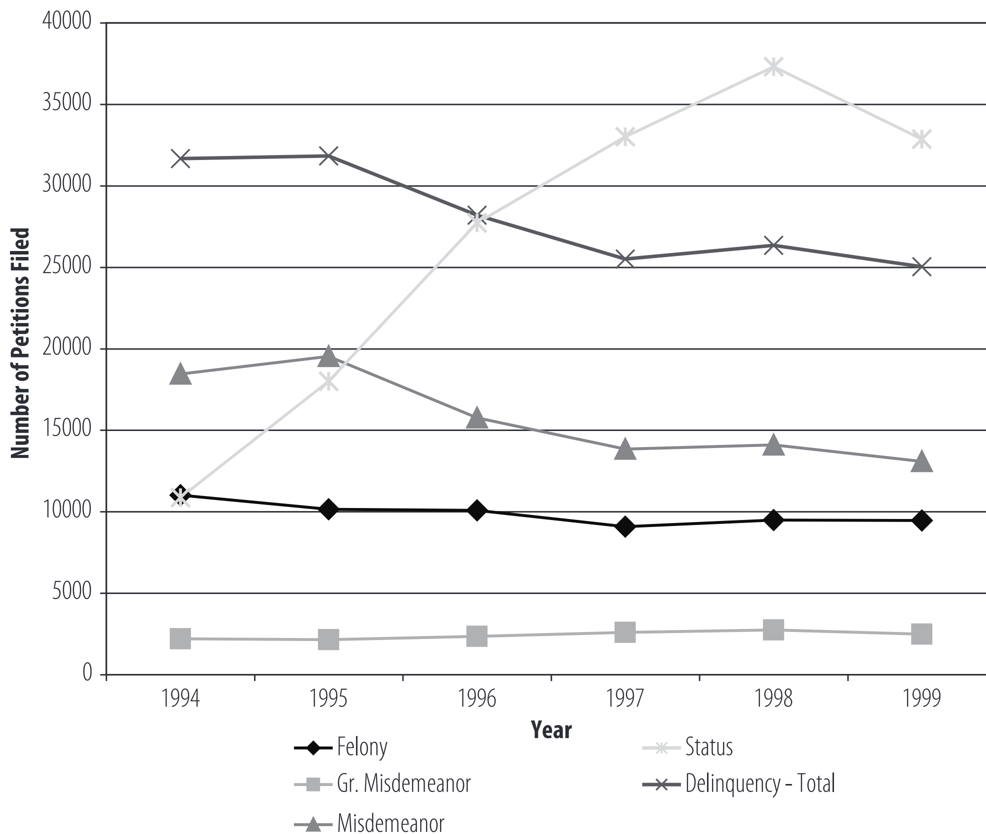
Findings and Analyses

Petitions Filed in Juvenile Courts

Wefirstexaminedhowdecriminalizingmanymisdemeanorsandconvertingthemintostatus offensesaffectedthenumberofdelinquencyandstatusoffensepetitionsfiled. Figure1uses annualstatistical workloadreportsgeneratedbytheMinnesotaSupremeCourt. Thesereports usetheoriginalMnCIScase-baseddataandreflectthetotalnumberofpetitionsfiled rather thanthenumberofindividualyouthsagainstwhomcourts filedpetitions.Figure1showsthe numberofdelinquencyandstatusoffensepetitionsfiledbetween1994and1999.In1994,the statefiled42,545petitions—31,674delinquencypetitionsand10,871statusoffensepetitions. Delinquencyfilingsincluded11,019felonypetitions,2,201gross misdemeanorpetitions,and 18,454misdemeanorpetitions(MinnesotaSupremeCourtResearchandPlanning,1995). Misdemeanorpetitionsaccountedformorethanhalf(58%)of alldelinquencyfilings.Status offensepetitionscomprisedapproximately26%ofallchargesfiled.

FIGURE 1

Minnesota Juvenile Delinquency & Status Offense Filings, 1994–1999



Source. Minnesota Supreme Court, Research and Planning Office, State Court Administration, Statistical Highlights Minnesota State Courts, 1994–1999.

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TABLE 1

Descriptives Statistics by Urban, Suburban, and Rural

Variable	Statewide				Urban				Suburban				Rural			
	1994		1999		1994		1999		1994		1999		1994		1999	
	N	%	*N*	%	*N*	%	*N*	%	*N*	%	*N*	%	*N*	%	*N*	%
Gender																
Male	21,637	71.8	26,807	68.5	4,892	70.5	7,259	67.8	6,179	73.0	7,737	68.4	10,566	71.7	11,811	69.0
Female	8,502	28.1	12,341	31.5	2,048	29.5	3,449	32.2	2,284	27.0	3,580	31.6	4,170	28.3	5,312	31.0
Total	30,139		39,148		6,940		10,708		8,463		11,317		14,736		17,123	
Age																
13 and younger	4,853	16.0	4,962	12.6	1,173	16.9	1,464	13.7	1,238	14.5	1,279	11.3	2,442	16.5	2,219	12.8
14	4,423	14.6	4,874	12.4	1,143	16.5	1,375	12.8	1,266	14.8	1,447	12.7	2,014	13.6	2,052	11.9
15	5,800	19.2	6,903	17.5	1,422	20.5	1,948	18.2	1,727	20.2	2,017	17.7	2,651	17.9	2,938	17.0
16	6,351	21.0	9,577	24.3	1,395	20.1	2,588	24.1	1,785	20.9	2,816	24.8	3,171	21.4	4,173	24.1
17	7,595	25.1	11,563	29.4	1,467	21.1	2,954	27.6	2,196	25.7	3,369	29.6	3,932	26.6	5,240	30.3
18 and older	1,248	4.1	1,490	3.8	341	4.9	390	3.6	318	3.7	439	3.9	589	4.0	661	3.8
Total	30,270		39,369		6,941		10,719		8,530		11,367		14,799		17,283	
Offense																
Felony	5,758	19.1	5,657	14.4	1,868	26.9	1,817	17.0	1,510	17.8	1,559	13.8	2,380	16.1	2,281	13.2
Misdemeanor	15,044	49.8	3,522	9.0	3,209	46.3	1,033	9.6	4,322	50.9	1,020	9.0	7,513	50.9	1,469	8.5
Status	9,379	31.1	30,081	76.6	1,858	26.8	7,864	73.4	2,665	31.4	8,744	77.2	4,856	32.9	13,473	78.2
Total	30,181		39,260		6,935		10,714		8,497		11,323		14,749		17,223	
Prior record																
None	17,368	57.4	20,532	52.2	3,079	44.4	5,100	47.6	5,043	59.1	5,956	52.4	9,246	62.5	9,476	54.8
1 or 2	8,576	28.3	11,375	28.9	2,255	32.5	3,259	30.4	2,435	28.5	3,210	28.2	3,886	26.3	4,906	28.4
3 or 4	2,603	8.6	3,925	10.0	914	13.2	1,198	11.2	672	7.9	1,157	10.2	1,017	6.9	1,570	9.1
5 or more	1,723	5.7	3,537	9.0	693	10.0	1,162	10.8	380	4.5	1,044	9.2	650	4.4	1,331	7.7
Total	30,270		39,369		6,941		10,719		8,530		11,367		14,799		17,283	

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The 1995 law dramatically altered the filings of delinquency, misdemeanor, and status offense petitions. The total number of petitions filed increased from 42,545 in 1994 to 57,888 in 1999. The number of felony and gross misdemeanors petitions filed remained relatively constant. Consistent with the national crime-drop in serious youth crime between 1994 and 1999, felony petitions decreased from 11,019 to 9,462 filings, whereas the smaller number of gross misdemeanor petitions increased somewhat (Snyder and Sickmund, 2006).[6]

The 1995 law retained delinquency jurisdiction over youths charged with serious misdemeanor offenses but decriminalized most misdemeanors. By relabeling these crimes as status offenses, the number of misdemeanor petitions declined more than 40% (18,454 in 1994 to 13,085 in 1999). Because misdemeanor petitions had comprised more than half (58%) of all delinquency filings in 1994, the total number of delinquency filings declined more than 27% (from 31,674 in 1994 to 25,030 in 1999). By contrast, the number of status offense petitions filed skyrocketed. In 1994, the state filed 10,871 status offense petitions. By 1999, status offense petitions mushroomed to 32,858—a threefold increase—and comprised more than half (57%) of all petitions filed in juvenile courts.

Youths Convicted in Juvenile Courts

Table 1 uses the NJCDA offender-based data to report descriptive statistics on the number of individuals convicted of felony, misdemeanor, and status offenses in 1994 and 1999 for the entire state as well as separately in urban, suburban/small urban, and rural counties. The descriptive statistics include youths' gender and age, the most serious offense at disposition, prior record, attorney representation, and so on.[7]

In both 1994 and 1999, males represented more than two thirds (71.8% in 1994 and 68.5% in 1999) of youths in juvenile courts. In both years, prosecutors charged the largest

6. We used Federal Bureau of Investigation arrest statistics compiled by the Office of Juvenile Justice and Delinquency Prevention to calculate the total number of juvenile arrests and the number of arrests recoded to reflect felony, misdemeanor, and petty/status offenses in 1994 and in 1999. Total arrests increased by 10.6% between 1994 (63,639) and 1999 (70,387). Felony arrests decreased by 6.3% (12,263 in 1994 and 11,495 in 1999) and misdemeanor arrests decreased by 85.9% (37,507 in 1994 and 5,295 in 1999). Conversely, arrests for petty/status offenses increased by 286.4% (13,869 in 1994 and 53,590 in 1999) (Puzzanchera, Adams, Snyder, and Kang, 2007). The arrests patterns mirror the changes in petitions filed between 1994 and 1999.

7. The data-collection instruments and practices of agencies necessarily constrain secondary analyses, and this study reflects those limitations. For example, in 1994, the MnCIS form included petitioned juveniles' pretrial detention status, but it dropped that variable from later data-collection instruments even though youths' detention status affects both the appointment of counsel and the subsequent disposition (Feld, 1989, 1991). In addition, many court administrators do not systematically record data on the race of juveniles.

   In 1994, the MnCIS forms included data on representation by attorney at filing as well as at disposition. In 1999, it recorded only data on representation by attorney at disposition. Fortunately, in 1994, the rate of representation for juveniles increased substantially between filing and disposition. The rates of representation for youths charged with a felony increased from 33.7% at filing to 65.7% at disposition. For youths charged with a misdemeanor, the rate increased from 21.8% to 38.8%. For juveniles charged with a status offense, the rate increased from 11.5% at filing to 19.6% at disposition. Thus, the rate of representation at disposition clearly provides the more valid and reliable indicator of the presence of attorneys.

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plurality of 17-year-old juveniles, followed by 16-year-old youths, and so on.[8] The number and percentage of juveniles convicted of felony, misdemeanor, and status offenses reflect the legislative changes.[9] In 1994, juvenile courts convicted approximately one fifth (19.1%) of youths of felonies, nearly half (49.8%) of misdemeanors, and roughly one third (31.1%) of status offenses. In 1999, juvenile courts convicted almost the same number of youths of felonies as previously (5,758 in 1994 and 5,657 in 1999). Because the number of youths charged increased substantially (from 30,181 in 1994 to 39,260 in 1999), felonies only accounted for one seventh (14.4%) of all convictions. As a result of decriminalizing most misdemeanors, the number of youths convicted of misdemeanors plummeted (from 15,044 in 1994 to 3,522 in 1999) from approximately half (49.8%) to approximately one tenth (9.0%) of youths convicted. By contrast, juveniles convicted of status offenses increased threefold (from 9,379 in 1994 to 30,081 in 1999) and comprised 76.6% of juvenile courts' dockets. A similar pattern prevailed throughout the state.[10] Thus, the legislative strategy to reduce the number of youths potentially eligible for public defenders clearly succeeded.

In both years, most youths appeared in juvenile courts for the first time (57.4% in 1994 and 52.2% in 1999). An additional quarter (28.3% in 1994 and 28.9% in 1999) had only one or two prior referrals. Offenders with three or more prior referrals comprised less than one fifth of youths (14.3.% in 1994 and 19.0% in 1999). Smaller proportions of youths in urban counties appeared in juvenile courts for the first time (44.4% in 1994 and 47.6% in 1999) than did their suburban (59.1% in 1994 and 52.4% in 1999) or rural (62.5% in 1994 and 54.8% in 1999) counterparts.

Representation by Counsel in Juvenile Courts

The 1995 law mandated the appointment of counsel or stand-by counsel for youths charged with felonies and gross misdemeanors or facing out-of-home placement.[11] To reduce the numbers of youths eligible for representation by the public defender, it decriminalized most misdemeanors and restricted dispositions of status offenders. In 1994, courts convicted more than two thirds

8. A youth's age at the time of offense rather than at the time of adjudication or convictions determines Minnesota juvenile court jurisdiction. A few youths (4.1% in 1994 and 3.8% in 1999) "aged-out" of juvenile court, but the court's dispositional authority over them continues until age 19 or even 21 (Podkopacz and Feld, 2001).

9. Recall that Figure 1 reported the number of separate petitions filed rather than the individual youths charged or convicted. As a result of dismissals, acquittals, continuances, plea bargains, and charge reductions, some attrition occurs between the number and the seriousness of the offenses with which the state initially charges a youth and the offense for which the juvenile court ultimately convicts and sentences a youth.

10. Chi-square tests indicate a significant difference between 1994 and 1999 for offense types by geographical location. Statewide (= 17,117.94, df = 3, $p < .001$), urban (= 4,211.183, df = 3, $p < .001$); suburban (= 4,979.145, df = 3, $p < .001$); and rural (= 7,976.545, df = 3, $p < .001$).

11. Court administrators recorded appointment of counsel and stand-by counsel on MnCIS forms to notify them of appearances, calendar changes, and so on. For clarity of analysis and presentation, we combined felony and gross misdemeanors because the law treats them similarly.

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TABLE 2

Urban, Suburban, and Rural Variation in Rates of Representation by Type of Offense, 1994–1999

	Statewide Attorney Presence (%)		Urban Attorney Presence (%)		Suburban Attorney Presence (%)		Rural Attorney Presence (%)	
Type of Offense	**1994**	**1999**	**1994**	**1999**	**1994**	**1999**	**1994**	**1999**
Felony	3,767 (65.7%)	3,589 (63.9%)	1,339 (71.7%)	1,141 (62.8%)	1,233 (82.8%)	1,048 (68.9%)	1,195 (50.2%)	1,400 (61.4%)
Total	5,737	5,618	1,868	1,817	1,489	1,521	2,380	2,280
Misdemeanor	5,809 (38.8%)	2,351 (67.0%)	1,655 (51.6%)	696 (67.4%)	2,422 (57.1%)	761 (75.6%)	1,732 (23.1%)	894 (60.9%)
Total	14,957	3,509	3,209	1,033	4,243	1,007	7,505	1,469
Status	1,826 (19.6%)	6,845 (22.9%)	616 (33.2%)	1,767 (22.5%)	669 (25.5%)	2,345 (27.2%)	541 (11.1%)	2,733 (20.3%)
Total	9,330	29,949	1,858	7,863	2,619	8,617	4,853	13,649
Overall	11,402 (38.0%)	12,785 (32.7%)	3,610 (52.1%)	3,604 (33.6%)	4,324 (51.8%)	4,154 (37.3%)	3,468 (23.5%)	5,027 (29.2%)
Total	30,024	39,076	6,935	10,713	8,351	11,145	14,738	17,218

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(20,802 or 68.9%) of all youths of felonies and misdemeanors for which they were entitled to representation. In 1999, juvenile courts convicted less than one quarter (9,179 or 23.4%) of youths of felonies or misdemeanors, and the remaining three quarters (76.6%) of youths were convicted of status offenses for which the law did not require appointment of counsel.

Table 2 reports juveniles' rates of representation by type of offense—felony, misdemeanor, and status—for the state and in urban, suburban, and rural counties. Lawyers historically represented proportionally fewer youths in rural counties, so we examined whether the legislative changes decreased justice by geography. Because the Minnesota Legislature intended to reduce the costs of counsel, we examined the impact of decriminalizing misdemeanors on representation of status offenders. In 1994, attorneys appeared at only 38.0% of the dispositions of delinquents and status offenders. Lawyers accompanied most youths in urban (52.1%) and suburban (51.8%) counties but accompanied less than one quarter (23.5%) of youths in the rural counties—clear evidence of justice by geography. In 1999, the statewide rate of representation declined to 32.7% of all delinquents and status offenders because of the dramatic increase in status petitions filed. The rates of representation decreased significantly in urban and suburban counties but increased in rural counties.[12]

For the entire state, the number of youths convicted of a felony and their rate of representation remained essentially unchanged before and after the law changed (5,737 [65.7%] in 1994 and 5,618 [63.9%] in 1999). Despite the explicit mandate to appoint counsel for *all* youths charged with felonies, juveniles' rate of representation remained unchanged—lower than that for adults charged with felonies or for juveniles in some jurisdictions (Feld, 1988b; Harlow, 2000). For these felony offenders, judges continued to do what they always had done.

Juvenile courts retained delinquency jurisdiction over the more serious misdemeanors (e.g., contempt of court, assault, domestic assault, prostitution, arson, dangerous weapons, etc.) for which out-of-home placement remained a dispositional option. Although the number of youths convicted of misdemeanors declined fourfold (from 14,957 in 1994 to 3,509 in 1999), the rate of representation of those delinquents who remained eligible for appointed counsel nearly doubled (from 38.8% in 1994 to 67.0% in 1999). For serious misdemeanors, we observed a greater, albeit incomplete, judicial compliance with the law. In urban and suburban counties, the rates of representation of youths convicted of serious misdemeanors actually exceeded those of youths convicted of felonies, and in rural counties, they almost matched them. Even though the number of youths convicted of status offenses tripled, their low rate of representation remained essentially unchanged (from 19.6% in 1994 to 22.9% in 1999) and suggests a high degree of organizational maintenance or homeostasis. Thus, before the changes, lawyers represented two thirds (65.7%) of youths convicted of felonies, more than one third (38.8%) of youths convicted of misdemeanors, and almost one fifth (19.6%) of youths convicted of status offenses. After the change, lawyers represented two thirds of youths convicted of felonies

12. Chi-square tests indicate a significant difference between 1994 and 1999 for overall attorney presence by geographical location: statewide (= 206.321, df = 1, $p < .001$); urban (= 591.793, df = 1, $p < .001$); suburban (= 408.750, df = 1, $p < .001$); and rural (= 130.584, df = 1, $p < .001$).

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(63.9%) *and* misdemeanors (67.0%) and represented approximately one fifth (22.9%) of status offenders. The only significant change in attorney presence occurred for youths charged with serious misdemeanors.

We next examined the changes in rates of representation for youths convicted of felony, misdemeanor, or status offenses in different parts of the state. Inexplicably, the rates of representation of juveniles convicted of a felony actually declined in urban (–8.9%) and suburban (–13.9%) counties. By contrast, rates of representation for rural youths convicted of felonies increased 11.2% and approached parity with urban and suburban courts. After the law changed, the rates of representation of youths charged with serious misdemeanors increased substantially throughout the state. Although the rate of representation of youths convicted of the serious misdemeanors increased in urban (+15.8%) and suburban (+18.5%) counties, it more than doubled in rural counties from 23.1% to 60.9%. Both of these changes substantially reduced the historic pattern of justice by geography. Giving the public defender the authority to represent delinquency cases and the 1995 law clearly had a positive impact on the delivery of legal services in rural counties.

The Minnesota Legislature barred out-of-home placement of status offenders in an effort to curtail their right to representation at public expense. Attorneys represented about one fifth of status offenders in 1994 (19.6%) and in 1999 (22.9%). The rates of representation decreased in urban counties (–10.7%), remained essentially unchanged in suburban counties (+3.0%), and increased in rural counties (+9.3%). Because the numbers of youths convicted of status offenses more than tripled in the interim, even with their lower rates of representation, the overall demand for legal services increased. Although the 1995 law prohibited judges from appointing public defenders for status offenders, in both 1994 and 1999, public defenders appeared with virtually all status offenders who had counsel (95.1% in 1994 and 95.5% in 1999). Because attorneys represented roughly similar numbers of delinquents and status offenders before and after the changes (from 11,402 in 1994 to 12,785 in 1999), the Minnesota Legislature did not achieve its goal of reducing costs.

Logistic Regression Predicting Attorney Presence

We used logistic regression to estimate which factors influenced the presence of attorneys before and after the law changed. As noted, the original MnCIS petition-based data did not systematically include racial demographic data in all 87 counties, and most counties reported a high rate of “unknown” race data. To overcome this problem, we estimated nested models with and without the race variable. In each year, race was a significant factor that predicted the presence of attorneys. If we excluded race from our models, then the effect of offense type or geographic location could be inflated artificially because the race of a juvenile could contribute to some variation in these variables. Therefore, we controlled for race and included a dummy variable for unknown race data to adjust properly for the effects of the other predictors. Table 3 reports the race categories by year and the number and percent of youths of each race category

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represented by an attorney. In 1994, 54% of the cases reported unknown race data as did 40.9% of the cases in 1999.[13] Because of the high number of cases reporting unknown race data, we must interpret effects caused by race cautiously.

TABLE 3

Race Descriptives

	1994		1999	
	N	%	*N*	%
Overall race descriptives				
White	10,910	36.0	16,672	42.3
Black	1,542	5.1	3,791	9.6
Native American	947	3.1	1,157	2.9
Hispanic	142	0.5	1,025	2.6
Asian/South Pacific	376	1.2	624	1.6
Unknown Race	16,353	54.0	16,100	40.9
Total	30,270		39,369	
Attorney presence by race				
White	3,390	29.6	4,802	37.4
Black	770	6.7	1,483	11.6
Native American	364	3.2	438	3.4
Hispanic	64	0.6	435	3.4
Asian/South Pacific	154	1.3	248	1.9
Unknown Race	6,708	58.6	5,431	42.3
Total	11,450		12,837	

Table 4 shows the logistic regression models predicting attorney presence. Models I and II report the factors predicting attorney presence in 1994 and in 1999, whereas Model III examines whether the factors affecting attorney presence at disposition are significantly different depending on the year. We coded the dependent variable (attorney presence) as a dichotomous variable (1 = private/public attorney present, 0 = no attorney present at the disposition).[14] We compared the

13. Cross-tabulations of the race variable by Minnesota's 87 counties revealed that all counties report unknown race data. No apparent pattern emerged for unknown race data across urban, suburban, or rural counties.

14. We combined the two types of representation (private and public defender) because private attorneys represented a low number and similar proportion of youths in each year. Of the 30,270 petitioned cases in 1994, only 633 (2.1%) juveniles retained private attorneys, 10,817 (35.8%) had public defenders, and the remaining 18,663 (61.7%) youths were unrepresented. Of the 39,369 petitioned cases in 1999, only 762 (1.9%) juveniles had private attorneys, 12,075 (30.7%) had public defenders, and the remaining 26,348 (66.9%) juveniles were unrepresented. In 1994, private attorneys represented 4.4% of youths charged with felonies, 1.9% of those charged with misdemeanors, and 1.0% of those charged with status offenses. In 1999, private attorneys represented 5.1% of youths charged with felonies, 4.0% of those charged with misdemeanors, and 1.1% of those charged with status offenses. In short, the numbers and proportions of youths represented by private counsel were small and did not change. We attributed the predominance of public defense representation to the Minnesota Rule of Juvenile Court Procedure 3.02, which bases eligibility for public defender representation on a child's income and assets rather than on that of his or her parents.

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effect of youths convicted of misdemeanors or status offenses with those convicted of felonies. For prior record, we compared youths with no prior record to those with one or two, three or four, and five or more prior referrals. To assess the impact of geographic locale, we included variables for urban, suburban, and rural counties. Demographic variables include age, gender (male=1; female=0), and race (using White youths as the reference category).

Models I and II allow us to examine the factors that predict the presence of attorneys in 1994 and 1999 separately. In both years, the independent variable for offense type is important. In 1994, juveniles charged with misdemeanors were 65.8% *less likely* to be represented by counsel than youths charged with felonies.[15] In 1999, after the Minnesota Legislature retained delinquency jurisdiction only over serious misdemeanors, youths convicted of misdemeanors were 15.6% *more likely* to be represented by an attorney than juveniles charged with a felony. As the Minnesota Legislature intended, youths convicted of a status offense were less likely to have counsel present at disposition than were youths convicted of felony offenses (–87.2% for 1994 and –82.2% for 1999). Not surprisingly, in both years, juveniles with prior referrals were more likely to have an attorney than were those youths making their first appearance, and the likelihood of counsel increased with the number of prior referrals. Youths with five or more prior referrals were twice as likely to have counsel present as youths appearing in juvenile court for the first time.

In light of earlier research reporting justice by geography (Bray et al., 2005; Burrus and Kempf-Leonard, 2002; Feld, 1991), we tested whether trial in urban, suburban, or rural courts affected youths' likelihood of representation. In both 1994 and 1999, juveniles convicted in suburban counties were more likely to be represented than youths processed in urban counties. By contrast, juveniles convicted in rural counties were less likely than those in urban counties to have an attorney present. However, in 1994, juveniles tried in rural counties were 69.3% less likely to be represented by a lawyer than their urban counterparts, whereas in 1999, rural juveniles were only 17.4% less likely to be represented than urban youths.

In both 1994 and 1999, age is negative and significantly related to the presence of counsel—older juveniles are *less* likely than younger youths to have an attorney present at their disposition. In both 1994 and 1999, males were more likely than females to be represented by an attorney. Interpreting the race effects cautiously, in 1994, Black youths were the only racial group that was *less* likely than Whites to have an attorney present; however, in 1999, all youths reporting race data were more likely than White youths to have an attorney present.

To examine whether the effects of attorney presence at disposition are significantly different depending on the year by offense type and county, Model III combines the 1994 and 1999 data sets and controls for year by adding significant interaction terms. The inclusion of interaction terms allows us to analyze whether the difference between the logistic coefficients in 1994 and 1999 is significant. The interactions for year by geographic locale are significant. Between the

15. For ease of interpretation, the exponentiated beta also can be calculated into percent change using the following equation: $\text{Exp}\beta - 1 \times 100$ = percent change (Knoke, Bohrnstedt, and Mee, 2002).

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TABLE 4

Predicting Attorney Presence at Disposition

	Model I (1994)		Model II (1999)		Model III (1994 and 1999)	
	B	Exp(B)	B	Exp(B)	B	Exp(B)
Offense characteristics						
Misdemeanor (vs. felony)	−1.073***	.342	.145**	1.156	1.057***	.347
	(.035)		(.046)		(.035)	
Petty/ status (vs. felony)	−2.053***	.128	−1.728	.178	−2.012***	.134
	(.042)		(.032)		(.041)	
Priors						
One to two priors (vs. no priors)	.622***	1.863	.410***	1.506	.504***	1.656
	(.031)		(.028)		(.021)	
Three to four priors (vs. no priors)	.913***	2.493	.781***	2.183	.837***	2.309
	(.048)		(.040)		(.031)	
Five or more priors (vs. no priors)	1.085***	2.96	.939***	2.558	.998***	2.712
	(.058)		(.042)		(.034)	
Geographical location						
Suburban (vs. urban)	.162***	1.176	.297***	1.345	.191***	1.211
	(.037)		(.035)		(.036)	
Rural (vs. urban)	−1.182***	.307	−.192***	.826	−1.150***	.316
	(.036)		(.036)		(.034)	
Demographic characteristics						
Age	−.075***	.307	−.192***	.826	−1.150***	.316
	(.036)		(.036)		(.034)	
Male (vs. female)	.134***	1.144	.287***	1.332	.223***	1.25
	(.031)		(.027)		(.2)	
Black (vs. White)	−.131*	.877	.250***	1.284	.122***	1.13
	(.064)		(.045)		(.037)	
Native American (vs. White)	.122	1.13	.185**	1.203	.158*	1.171
	(.078)		(.071)		(.053)	
Latin American (vs. White)	.239	1.27	.576***	1.778	.517***	1.677
	(.188)		(.075)		(.069)	
Asian (vs. White)	.612***	1.844	.484***	1.622	.528***	1.695
	(.199)		(.093)		(.073)	
Unknown (vs. White)	.451***	1.57	.439***	1.55	.451***	1.569
	(.030)		(.028)		(.020)	
Year (1 = 1999)	—	—	—	—	−.504***	.604
					(.051)	
Year*suburban	—	—	—	—	.065	1.067
					(.048)	
Year*rural	—	—	—	—	.913***	2.492
					(.046)	
Year*misdemeanor	—	—	—	—	1.195***	3.305
					(.058)	
Year*petty/status offense	—	—	—	—	.272***	
					−.052	1.313
Constant	1.582***	4.864	1.725***	5.615	1.198***	6.805
	(.123)		(.119)		(.089)	
Chi-square (df)	6,795.635***		6,942.746***		13,844.002***	
	(14)		(14)		(19)	
−2LL	32,919.600		42,229.947		75,247.427	

$^{*}p < .05$. $^{**}p < .01$. $^{***}p < .001$.

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years 1994 and 1999, the relative ranking stays the same. Suburban counties are most likely to have an attorney at disposition, followed by urban counties, with rural counties having the lowest likelihood of having an attorney at disposition. But comparing the same type of county across years, urban and suburban counties see a drop in the odds for attorney presence between 1994 and 1999, whereas rural counties see an increase. Thus, the interaction terms confirm our argument that the 1995 law significantly reduced justice by geography for rural counties.

The interaction for year by offense type is also significant. Between 1994 and 1999, the relative ranking for offense type predicting attorney presence at disposition remains the same. Youths convicted of status offenses have the lowest odds of having an attorney present at disposition, followed by felony offenders, with misdemeanor offenders having the highest odds of having an attorney present at disposition. The interaction terms allow us to compare offense types across years. Between 1994 and 1999, youths convicted of felony and status offenses show a decrease in odds of representation, whereas youths convicted of misdemeanor offenses show an increase in the odds of having an attorney. The legislative narrowing of misdemeanor offenses had a significantly greater impact on predicting attorney presence in 1999 than in 1994.

Discussion and Conclusion

For several decades, Minnesota has struggled to comply with *Gault*'s (1967) mandate to provide juveniles with assistance of counsel. The 1995 law required judges to appoint counsel for youths charged with felonies and in cases in which judges removed youth from home, but the Governor vetoed the funds necessary to implement the legal mandate. As a cost-saving strategy, the Legislature creatively redefined most misdemeanors as status offenses, barred out-of-home placements, and thereby eliminated juveniles' constitutional right to counsel.

The 1995 law reforms produced a mixed and somewhat disappointing impact on the appointment of counsel. Both in 1994 and 1999, the data presented in Table 4 describe predictable factors associated with appointment of counsel—youths who are younger, male, charged with felonies, and with more extensive prior records are more likely to have lawyers than are youths who do not share those characteristics.

Despite legislative efforts to increase representation of youths charged with felonies, the statewide rate at which counsel appeared remained essentially unchanged. The judicial noncompliance suggests a high level of organizational maintenance and stability in courtroom workgroups as well as an adaptive strategy to handle cases efficiently and limit costs. The changes in law and court rules should have produced a dramatic increase in felony rates of representation comparable with that which occurred with the serious misdemeanants. Rates of felony representation improved only in rural counties, where the presence of counsel long had lagged behind urban and suburban counties. We attributed this increase to changes that gave the state public defender authority to represent delinquents and to the 1995 law, which mandated the appointment of counsel. However, inexplicable declines in rates of felony representation in urban and suburban counties offset the improvements in rural Minnesota. By contrast with the mixed felony results, rates of representation of delinquent youths convicted

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of serious misdemeanors increased substantially throughout the state and more than doubled in the rural counties. We attributed this finding to decriminalizing most misdemeanors and to reducing the numbers of youths eligible for court-appointed counsel as well as to improvements in the delivery of legal services.

The findings raise several policy questions that the data cannot answer. Although representation of rural youths improved dramatically, why did the felony rates of representation for urban and suburban youths unexpectedly decline? Despite the clear legislative intent to the contrary, why did judges continue to allow one third of juveniles convicted of felonies and serious misdemeanors to waive counsel? Whether a delinquent pleads guilty or goes to trial, the offense and disposition define the legal requirements for judicial appointment of counsel. Four decades after *Gault* (1967), why does providing lawyers in juvenile courts remain so problematic? These findings suggest a continuing judicial resistance to formal legal rational initiatives in a substantively irrational organization. Do judges resist appointment of counsel to maintain autonomy and preserve discretion? Qualitative observations of juvenile court proceedings or analyses of transcripts of judicial waiver colloquies might provide answers to some of these questions.

Developmental psychologists have argued for decades that juveniles lack competence to exercise or waive legal rights (Grisso, 1980, 1981; Grisso et al., 2003). The 1995 law recognized the developmental limitations of juveniles and mandated the appointment of counsel or stand-by counsel for all juveniles charged with felonies, serious misdemeanors, or who faced out-of-home placement. And yet, judges continued to find waivers of counsel, despite the legislative prohibition. States must adopt policies to prohibit waivers of counsel by juveniles charged with crimes and develop mechanisms to monitor judicial compliance with those requirements.

By contrast, judges continued to appoint counsel for about one fifth of status offenders despite the unambiguous language to the contrary. Because the statute prohibited judges from appointing counsel for youths charged with status offenses, why did the rates of representation for suburban and especially rural youths increase? Although lawyers only represented about one fifth of these youths, why did judges continue to assign, and why did public defenders accept, appointments to represent status offenders? Appointing counsel for even a small proportion of the vastly more numerous status offenders produced a net increase in the number of youths represented. Because the Minnesota Legislature intended to reduce costs by decriminalizing misdemeanors, judicial appointment of counsel for any status offenders only could have a negative impact on the public defenders' budgets.

Although it is salutary that lawmakers chose to prohibit incarceration of unrepresented youths, it is dispiriting that they also could not ensure lawyers for all eligible young offenders. Juveniles, by virtue of inexperience and immaturity, require assistance of counsel to understand legal proceedings, to prepare and present a defense, to negotiate guilty pleas, and to ensure fair adjudications. Although reducing the likelihood of incarceration is a laudable goal, the legislature and courts should not seek that goal by forcing young people to appear pro se in legal proceedings with which they are unfamiliar and for which they are most assuredly unprepared. Since *Gault* (1967), delinquency proceedings—especially those involving felony charges or custody

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status—are serious proceedings with significant direct, collateral, and long-term consequences (Feld, 2003a). For these matters, it is even more true now than it was then that a "proceeding where the issue is whether the child will be found to be 'delinquent' and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution" (*Gault*, 1967:36). In light of the mixed success of law reforms, either the Minnesota Supreme Court or the State Public Defender should create administrative oversight mechanisms to monitor and assure that juvenile court judges comply with the unambiguous legal requirement to appoint lawyers for all eligible youths.

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