

2013 SENATE JUDICIARY

SB 2035

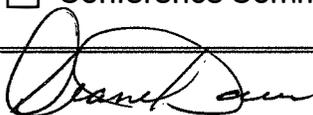
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2035
1/15/13
Job #17205

Conference Committee

Committee Clerk Signature



Minutes:

Attached testimony

Relating to extended jurisdiction juvenile proceedings, relating to juvenile transfers to adult court.

Senator David Hogue - Chairman

Vonette Richter- Staff Attorney with the Legislative Council - She explains that she staffed the interim judiciary committee that worked on this bill draft. She distributes copies of the final report of that committee and the final recommendation. (see #1) She goes on to explain the sections of the bill and who worked on it. In section one is the right to a jury trial under extended juvenile jurisdictions proceedings. She goes on to say this is not available to juveniles right now. Section two of the bill provides that adjudication under extended juvenile jurisdiction would be considered a conviction of a crime. She goes on to explain section two. She then explains section 3 which is the current statute that provides for transfer to adult court is amended and under this bill the only offense that there would be an automatic transfer to adult court would be murder or attempted murder. She explains more on section 3 dealing with transfers to adult court. She explains that section 4 is the meat of the bill, this is the new section that establishes new proceeding called extended jurisdiction juvenile proceeding. It provides that upon a motion of any party including the child's parents or guardians or upon the courts motion a proceeding involving a child alleged to have committed a delinquent act may be considered for designation as a extended jurisdictional proceeding if: the child is 16 years or more and requests the transfer, or the child is 14 years of age or more at the time of the offense and is alleged to have committed one of the acts listed; gross sexual imposition or attempted, various drug crimes or manslaughter, aggravated assault, robbery, arson etc. She goes on to explain the sub-sections and reads the amendment that was added in the interim.

Senator Hogue - Asks who is on the juvenile policy board.

Richter - Explains that it is a Supreme Court created board and believes someone else may explain the membership better.

Aaron Birst - Association of Counties - He hands out testimony (#2) of others and says the States Attorney's Association does not take a position on this bill. He explains some background of the bill and that it tries to create a mid-level section of juvenile court. He says the prosecutor is given the ability to seek some mid-level ground where you can keep

someone in juvenile court but if they are failing in that regard you can move them and give them an adult sentence.

Senator Sitte - Asks approximately how many counties are in favor and opposed it.

Birst - Said he has found through extensive polling that the 3 larger jurisdictions support the effort and all others oppose the effort. He said many believe it's unnecessary.

Senator Nelson - States that the initial impetus of this bill came from the Fargo school district who requested something in between because some kids were not getting the message.

Birst - Agrees and states that a number of states do have this.

Senator Berry - Asks about the current system doesn't allow for someone getting the message. He asks what changes here other than adding another level.

Birst - Replies that this allows a midlevel case that does not seem to be progressing in juvenile court be put in the adult system.

Senator Berry - Wonders why the split between the larger cities and smaller population areas.

Birst - He can only speculate that the larger jurisdiction places have more of the tweener cases. He goes on to explain reasons as to why.

Opposition

Louis Henson - Assistant State Court Administrator - One of his responsibilities is the Juvenile Policy Board which is made up of four district court judges, one Supreme Court Justice, one referee, and one juvenile director. He said they are appointed by a variety of entities. He hands out testimony for Judge M. Maring and discussions from the policy board. (#3) He said the Policy Board does not support this bill.

Senator Lyson - Asks for reasons why they don't think this will work.

Henson - Explains the biggest red flag would be the jury trial. They have serious concerns that a referee could reside over a jury trial or would have to be a district court judge. He goes on to explain areas that do not have referees or some that don't have district judges.

Senator Hogue - Said he has read Justice Maring's testimony and one of the major concerns she has is that the extended juvenile jurisdiction doesn't work. He says her argument is based on empirical data.

Neutral

Erica Shively - See written testimony (#4)

Senator Berry - Asks if anyone can make a case to overhaul the entire system.

Shively - She explains this can extend the age of 18 up to the age of 20. She said she is unable and cannot make a case that the system needs to be overhauled.

Senator Armstrong - Asks about the timelines that apply juvenile timelines or criminal timelines. He says there are very strict juvenile timelines.

Shively - She said that is one of the questions that are open ended. She explains the differences and the many rules that are unclear.

Close 2035

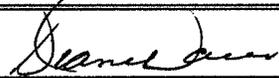
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2035
2/4/2013
Job #18241

Conference Committee

Committee Clerk Signature



Minutes:

VOTE

Relating to extended jurisdiction juvenile proceedings, relating to juvenile transfers to adult court

Senator David Hogue - Chairman

Committee work

Senator Sitte motions for a do not pass
Senator Armstrong seconded

Discussion

Senator Nelson mentions this bill came out of this committee last session as a study and no one has changed their minds. She says the larger counties are for this and that is who she represents so she will vote no. Senator Sitte said she sat on the interim committee and referred to compelling testimony from Justice Mary Maring. She thinks it can work against rehabilitation.

Vote - 5 yes, 2 no

Senator Sitte will carry

FISCAL NOTE
Requested by Legislative Council
12/31/2012

Bill/Resolution No.: SB 2035

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill allows for the option of an extended jurisdiction in certain juvenile proceedings.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

There is no fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Don Wolf
Agency: Court System
Telephone: 328-3509
Date Prepared: 01/02/2013

Date: 2-4-13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2035**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S. Sitte Seconded By S. Armstrong

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson		X
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson		X			
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 5 No 2

Absent _____

Floor Assignment S. Sitte

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2035: Judiciary Committee (Sen. Hogue, Chairman) recommends DO NOT PASS
(5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2035 was placed on the
Eleventh order on the calendar.

2013 TESTIMONY

SB 2035

January 15, 2013

EXCERPT FROM INTERIM JUDICIARY COMMITTEE FINAL REPORT

EXTENDED JUVENILE COURT JURISDICTION STUDY Testimony and Committee Considerations

In its study of the juvenile court jurisdiction and the adult court transfer process, the committee received extensive information and testimony from several assistant state's attorneys who are assigned to prosecute juvenile court cases; several members of the North Dakota Juvenile Policy Board; the Director of Juvenile Court Services; a juvenile court officer; the North Dakota Association of Counties; and the North Dakota Association of Criminal Defense Lawyers. The committee's deliberations focused primarily on whether to recommend legislation that would allow for extended juvenile court jurisdiction for certain offenses.

Testimony from an assistant state's attorney indicated the current juvenile transfer process, which provides that certain offenses, such as gross sexual imposition, drug offenses, and murder, are mandatorily transferred to adult court, takes away the ability of the juvenile court to assess what type of treatment or rehabilitation is best for the child. According to the testimony, extended juvenile court jurisdiction would be an extra tool for juvenile courts to assess each case individually. Under extended juvenile court jurisdiction, the child would receive both a juvenile disposition and an adult sentence. The juvenile court would have the ability to attempt to treat the child in juvenile court. If, after a period of time, the juvenile court determines the disposition attempted was not successful, the court could revoke the disposition and sentence the child as an adult. It was noted that under the current system, the prosecutor must decide if juvenile court or adult court is appropriate before adjudication. After the child has been adjudicated of the offense, the case cannot be transferred to another court.

Testimony from representatives of the North Dakota Juvenile Policy Board indicated the board had a number of concerns with the extended juvenile court jurisdiction proposal and questioned how often such a law would be used.

The committee also received information from a juvenile court officer regarding his experience with a similar extended juvenile jurisdiction process in Minnesota. According to the testimony, while the extended jurisdiction juvenile process provides another option for those isolated cases in which the juvenile committed a serious offense but may not be appropriate for an automatic transfer to the adult system, the extended jurisdiction juvenile process in Minnesota was implemented inconsistently across jurisdictions based on personal opinions, philosophies, and interpreting the statute differently. It was noted the extended juvenile jurisdiction is used sparingly in Minnesota. According to the testimony, when designating a juvenile extended jurisdiction, the juvenile may have some short-term effectiveness, but it did not appear to reduce recidivism in the long run. Of the 15 extended jurisdiction juvenile offenders from the 10 years the juvenile court officer worked in Minnesota, 8 of them have committed new misdemeanor or felony-level offenses that resulted in

supervised probation with the Minnesota Department of Corrections and some term of jail or imprisonment.

During the course of the committee's study of extended juvenile court jurisdiction, the committee considered a bill draft that would allow for extended jurisdiction in certain juvenile proceedings. Testimony in explanation of the bill draft indicated the bill draft was the product of a committee composed of judicial referees, defense attorneys, assistant state's attorneys, a criminal justice graduate student, and various agencies and associations. The bill draft was modeled after a similar law in Montana. The bill draft added a new section to Chapter 27-20 to allow for the option of extended juvenile jurisdiction proceedings. This new section would provide for the imposition of two dispositions; one juvenile disposition and one stayed adult sentence. The new section also provides a procedure for revoking the child's juvenile disposition and imposing the stayed adult sentence. Under the bill draft, the only offense with an automatic transfer would be murder.

Testimony from several assistant state's attorneys in support of the bill draft indicated under current law there are only two options--file a motion to transfer the case to adult court or keep the case in juvenile court. It was noted not all cases fit neatly into one of those two categories. It also was noted although these cases do not arise on a frequent basis, there is a need for a workable mechanism for dealing with them; the extended jurisdiction juvenile proceeding would provide that middle ground. According to the testimony, a juvenile prosecutor's decision of whether a child should be charged as a juvenile or as an adult for an offense committed as a child is a difficult one. A juvenile prosecutor also has to consider public safety and whether a juvenile court disposition would be enough to treat fully the child's needs. Extended juvenile jurisdiction would give juvenile prosecutors the ability to wait and see--to first give the child the opportunity to be treated as a juvenile and then impose the adult sentence if what can be provided in juvenile court is not enough.

Testimony in opposition to the bill draft from representatives of the Juvenile Policy Board indicated the board, in consultation with all of the juvenile court directors, voted not to support this legislation. Referrals to juvenile court are down in the state because of the positive impact the state juvenile justice system's philosophy of balanced and restorative justice has had on improving outcomes for children and recidivism. The testimony indicated this philosophy keeps children in the community and relies on evidence-based approaches like in-home family therapy and cognitive restructuring. The testimony cited several studies that have expressed skepticism about the effectiveness of extended juvenile jurisdiction laws, which are also known as blended sentencing laws.

There have been changes in the area of dealing with juvenile crime since many of the blended sentencing laws were passed in the 1990s. It was noted the way the juvenile court system deals with juveniles has changed, which statistically has been very successful. According to the testimony, the studies indicate that possibility of being transferred to adult court does not mean anything to juveniles nor does it affect their behavior. It was noted the extended juvenile court jurisdiction is a prosecutor's tool.

Testimony in opposition to the bill draft from the Director of Juvenile Court Services noted that nationally juvenile crime continues to decline, and juvenile violent crime is at its lowest point in two decades. North Dakota's juvenile referrals have declined at a similar pace, and the state has seen a 20 percent decrease in delinquent referrals since 2007. In 2011 North Dakota had 405 felony offenses—11 percent of the total—and only 11 cases were transferred involuntarily to adult court. The testimony noted threats, no matter how serious, do not change adolescent behavior. Juveniles who have made some terrible choices are not capable of changing their thoughts and actions just because they are threatened with serious future consequences, such as adult jail time. It was noted research in the last decade clearly has shown the very last part of a child's brain to develop is the frontal lobe. The frontal lobe involves the ability to recognize future consequences and make behavior choices accordingly. Without a fully developed frontal lobe, teenagers are like a fully loaded car without brakes; the result being that delinquent behavior is normative for that age. According to the testimony, the brain is not fully developed until around age 21 for females and up to age 23 for males. According to the testimony, the state's juvenile court officers agree with this current adolescent brain research as well as what they know about the harmfulness of early transfers to adult court. It was noted six large-scale national studies have shown that juveniles transferred to adult court are actually more likely to reoffend. Finally, it was noted the juvenile court would support legislation that moves delinquent acts other than murder and attempted murder away from the mandatory transfer and allow the court to decide on cases that transfer after a full needs and risks assessment is completed.

The committee also received testimony in opposition to the bill draft from the North Dakota Association of Criminal Defense Lawyers. The testimony expressed concern about young teens that may fall under this bill draft who may not actually be violent or habitual offenders. Concerns also were expressed that the interests of the parents were not adequately addressed in the bill draft, and this change may cause more harm to that juvenile that really needs rehabilitation but instead is saddled with a lifelong felony conviction.

Testimony from the North Dakota Association of Counties indicated while a significant number of the state's attorneys support the extended juvenile jurisdiction concept, several have questioned some of the technical issues and a few have questioned the need for the bill draft altogether. It was noted because of the disagreement among the members of the State's Attorneys Association, the association neither supports nor opposes the bill draft. According to the testimony, of the four larger counties in the state, the state's attorneys from Burleigh, Grand Forks, and Cass counties likely would support the concept while the state's attorney from Ward County likely would not support the concept.

To address several issues raised by the testimony, the committee amended the bill draft to clarify that a motion for designation as an extended jurisdiction juvenile proceeding may be made by any party, including the child's parent or guardian. In response to a concern about a judicial referee handling extended jurisdiction juvenile cases, the committee amended the bill draft to

provide that the assignment of a judicial officer to conduct an extended jurisdiction juvenile proceeding must be decided in accordance with rules adopted by the Supreme Court.

Recommendation

The committee recommends a bill draft to provide the option of an extended juvenile jurisdiction proceeding for certain offenses. The bill draft provides that upon the motion of any party, including a child's parent or guardian, the court may consider the proceeding an extended jurisdiction juvenile proceeding. The bill draft also provides the assignment of a judicial officer to conduct an extended jurisdiction juvenile proceeding must be decided in accordance with rules adopted by the Supreme Court.

SB 2035

Senate Judiciary Committee

January 15, 2013

Testimony of Renata Olafson Selzer, Assistant Cass County State's Attorney

Mr. Chairman and Members of the Committee:

My name is Renata Olafson Selzer, and I am an Assistant State's Attorney for Cass County.

I have been employed at Cass County since January of 2008. I currently handle cases involving personal crimes in adult court. Prior to joining our personal crimes team, I worked on juvenile delinquency cases for several years. I would like to express my support for adding the option of extended juvenile jurisdiction (EJJ) to the Juvenile Court Act.

As a prosecutor in juvenile court, I found it frustrating that we have a lack of alternatives when it comes to cases involving serious delinquent acts. Presently, we only have two options: file a motion to transfer the case to adult court, or keep the case in juvenile court. The transfer statute, section 27-20-34 of the North Dakota Century Code, does not provide any middle ground. Of course, some cases are clearly inappropriate for juvenile court, such as murder cases. There are also cases that, for various reasons, are clearly inappropriate for adult court. The problem is that not all cases fit neatly into one of those two categories. There are cases that fall somewhere in the middle. These cases are too serious or complex to handle in the same manner as a typical delinquency, yet they do not warrant a transfer to adult court. Although we do not encounter these cases on a frequent basis, there still needs to be some workable mechanism for dealing with them.

Section 27-20-34 currently requires the juvenile court to transfer a case to adult court if the offender is fourteen years old or older and there is probable cause to believe the child has committed the offense of delivery of a controlled substance (with certain exceptions) or gross sexual imposition (GSI) or attempted GSI by force or threat. However, there are times when a case falls into this automatic transfer category, but it does not seem to be appropriate for transfer based on the

circumstances surrounding the offense and the needs of the juvenile. The bill would allow the court to consider EJJ as an option in these cases, rather than requiring an automatic transfer when probable cause is found.

EJJ provides a middle ground between transferring a case to adult court and keeping the case in juvenile court. When a case is designated as an EJJ proceeding, the court imposes a juvenile court disposition. At the same time, the court also imposes an adult court sentence. However, execution of the adult court sentence is suspended on the condition that the juvenile not violate the court's order and not commit any new offenses. The case remains in juvenile court, and the child is treated as a juvenile. If the child violates the juvenile court's order, then the court would conduct a revocation hearing. The court may order execution of the adult sentence if the child is found to have violated the order.

Under section 27-20-34, in its current form, there are several serious offenses that are not in the automatic transfer category. In order to transfer these cases to adult court, the juvenile court must make certain findings, including a finding that the juvenile is not amenable to treatment in juvenile court through available programs. The burden is on the juvenile to show that he or she is amenable to treatment in juvenile court with respect to the following offenses: manslaughter, aggravated assault, robbery, arson involving an inhabited structure, escape involving the use of a firearm, destructive device, or other dangerous weapon, and in cases in which the alleged offense would be a felony if committed by an adult and the child has two or more previous delinquency adjudications for felony-level offenses.

In determining the amenability to treatment issue, the court must consider a number of factors, including the juvenile's previous record and the success or failure of previous attempts to rehabilitate. As a practical matter, if the juvenile has no previous history of delinquency, it is unlikely that the case will be transferred. Even where there is a history of delinquent behavior, the court may not transfer the case. Because the juvenile court's jurisdiction terminates when the child

reaches the age of twenty, it can be problematic to leave such serious cases in juvenile court. There is little or no recourse after the juvenile reaches the age of twenty if the juvenile has failed to comply with the court's order. SB 2035 addresses this problem because it would allow the juvenile court to consider EJJ as an option in these cases.

As a prosecutor, I have worked with many crime victims and their families. A common theme that I hear from victims in serious delinquency cases is how unjust it is to keep such cases in juvenile court, given the lack of recourse if the juvenile approaches the age of twenty and has failed to comply with the court's order. I believe that if EJJ were an option in these cases, victims would find some solace in the fact that the offender can be held accountable to follow the juvenile court's order. It is certainly not in the best interests of the juvenile, the victim, or the community to release a juvenile offender from the court's jurisdiction before he or she has received the appropriate treatment and rehabilitation. Moreover, a seventeen-year-old who has committed a serious offense, such as manslaughter or aggravated assault, may need a higher level of supervision and treatment than can be provided in the three years that are left in the juvenile court system before the court loses jurisdiction.

If EJJ were implemented in these cases, the juvenile would be allowed to remain in the juvenile court system so long as he or she follows the order of the court. If the juvenile is noncompliant, the court would have the ability to transfer the matter to adult court. The bill does not require the court to use EJJ, and it limits the types of offenses that can be designated for EJJ. Thus, for example, a fifteen-year-old who has committed a misdemeanor-level theft would not be subject to EJJ under the provisions of this bill. Although I believe EJJ would be utilized in a relatively small number of cases, it would be helpful for the court to have another option to consider. I would urge the Committee to support the bill.

TESTIMONY OF MARY MUEHLEN MARING, JUSTICE
North Dakota Supreme Court

BEFORE THE SENATE JUDICIARY COMMITTEE
January 15, 2013

Chair Hogue and Members of the Senate Judiciary Committee:

My name is Mary Muehlen Maring. I am a Justice on the North Dakota Supreme Court, and submit this testimony individually. I am, unfortunately, not able to personally attend the hearing before your committee today on SB 2035 due to a previously-scheduled North Dakota Supreme Court oral argument. Therefore, I offer this written testimony in opposition of SB 2035 for your consideration.

The Juvenile Policy Board of the North Dakota Supreme Court has been considering the proposal of Haley Wamstad, Assistant State's Attorney for Grand Forks County, since 2011. It has reviewed drafts of legislation proposing extended juvenile jurisdiction. At its November 22, 2011, meeting, the Board, in consultation with all of the juvenile court directors, voted not to support this legislation.

The philosophy of our juvenile justice system in North Dakota is balanced and restorative justice. Referrals to juvenile court are down in North Dakota because of the positive impact this has had on improving outcomes for children and recidivism. This philosophy keeps children in the community and relies on evidence-based approaches like in-home family therapy and cognitive restructuring.

A few studies of extended juvenile court jurisdiction have been conducted. I have read the 2002 Illinois study and an analysis of the Minnesota law.

Extended juvenile jurisdiction has been utilized to crack down on serious and violent juvenile offenders with most of the legislation enacted in the 1990s. Extended juvenile jurisdiction laws, also known as blended sentencing laws, are one way in which more minors become eligible for adult court. The Illinois study found that although extended juvenile jurisdiction may be perceived as a useful tool, there is skepticism whether “the potential [of an] adult sentence will deter minors who receive EJJ sentences from getting into more trouble.” Illinois Criminal Justice Information Authority Implementation Evaluation of the Juvenile Justice Reform Provisions, at 133 (2002). The study noted “minors are prone to exhibit impulsive behavior that is not in their best interest. Many minors do not exhibit these behaviors because they are destined to be ‘hardened criminals’ but rather because they lack the maturity that comes with adulthood.” Id. at 136. In Minnesota, an analysis was completed using cases from Hennepin County (Minneapolis), the largest metropolitan county in the state. Marcy R. Podkopacz and Barry C. Feld, The Back-Door to Prison: Waiver Reform, “Blended Sentencing,” and the Law of Unintended Consequences, 91 Journal of Criminal Law and Criminology, 997 (Summer 2001). The researchers found: “Clearly, the introduction of the EJJ law has widened the net of criminal social control. ‘Net widening’ occurs when reformers introduce a new sanction intended to be used in lieu of another sanction which is more severe, in this instance, EJJ blended sentencing in lieu of certification and imprisonment as an adult.” Id. at 1069. They concluded that judges will more often impose an intermediate sanction not on those who previously could have been transferred or punished, but rather on those who would have been treated less severely than the intermediate sanction permits. Id. The researchers found:

Prior to the adoption of the EJJ law, prosecutors filed an average over 47 transfer motions per year. Following the adoption of the presumptive waiver and EJJ statutes, prosecutors filed an average of 168 motions that exposed youths either to the immediate or secondary possibility of criminal sanctions. Judges previously transferred an average of 31 youths for criminal prosecution and subsequently transferred about 33 youths each year. Significantly, however, judges sentenced an average of 83 additional youths each year under the EJJ provisions, which included a stayed adult criminal sentence. These EJJ youths were considerably younger than those juveniles against whom prosecutors previously or presently filed waiver motions and appeared to be somewhat less serious offenders. Despite their relative lack of criminal maturity or seriousness, a sizeable proportion of these EJJ youths (35.3%) failed during their juvenile probationary period. And the majority of these failures (76.2%) consisted of probation violations rather than serious new offenses. This experience with EJJ is consistent with a substantial body of research on “intermediate sanctions” which also reports higher rates of violation of technical conditions of probation than for comparable offenders subject to ordinary probation or punishment. . . . And, when judges revoked these EJJ youths’ probation, they sentenced substantial numbers of them to the workhouse and to prison for violations which ordinarily would not warrant certification or incarceration in the first instance. If a new correctional program is justified and funded to serve as an alternative to incarceration and is instead used for people who would otherwise not have been incarcerated, patently, it has been misapplied. As a result, it appears that the blended sentencing law which the legislature hoped would give juveniles “one last chance” for treatment has instead become their “first and last chance” for treatment, widened the net of criminal social control, and moved larger numbers of younger and less serious or chronic youths into the adult correctional system indirectly through the ‘back door’ of probation revocation proceedings rather than through certification hearings.

Id. at 1069-70 (citations omitted).

The studies of mandatory transfer laws have also shown “that transfer fails to deter violent juvenile offenders.” Enrico Pagnanelli, Children as Adults: The Transfer of Juveniles to Adult Courts and the Potential Impact of Roper v. Simmons, 44 Am. Crim. L. Rev. 175, 183 (Winter 2007). “In fact, various studies have indicated that transfer actually increases recidivism among these offenders. This increased recidivism manifests a failure to deter, a failure to rehabilitate, and most significantly, a failure to protect society.” Id.

In 2005, the United States Supreme Court decided a groundbreaking case, Roper v. Simmons, 543 U.S. 551 (2005). The issue was whether imposing the death penalty on juveniles was “cruel and unusual” and, therefore, in violation of the Eighth Amendment of the United States Constitution. The U.S. Supreme Court held: “juvenile offenders cannot with reliability be classified among the worst offenders” because there are three general differences between juveniles and adults: first, “a lack of maturity and an underdeveloped sense of responsibility”; second, “juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure”; and third, “the character of a juvenile is not as well formed as that of an adult.” Roper, 543 U.S. at 569-70. The Court stated that the absence of evidence of deterrent effect on juveniles was of special concern because the characteristics that make juveniles less culpable than adults also make them less susceptible to deterrence. Id. at 571. The U.S. Supreme Court “barred the capital punishment of juveniles because scientific research indicated that the capital punishment of juveniles served neither of its intended purposes:” deterrence or public safety. Pagnanelli, supra, at 188.

The same logic led the United States Supreme Court to hold that a sentence of life in prison without parole for juvenile non-homicide offenders is cruel and

unusual punishment. Graham v. Florida, 130 S. Ct. 2011 (2010).

Similar logic and scientific evidence leads to the conclusion that mandatory and automatic transfers of juveniles to adult criminal court should be of serious concern.

In summary, studies of the use of extended juvenile jurisdiction conclude that the threat of imposition of an adult sentence has not deterred juveniles from committing further offenses while on probation and has increased the number of juveniles transferred to the adult criminal system and prison. These juveniles include those who would never have been transferred under existing criteria in the first place and who are considerably younger. Science and research have confirmed that three developmental characteristics of juveniles – their immaturity, their vulnerability, and their changeability – render them very different from adults. These differences are central to culpability and the proportionality of punishment imposed on juveniles.

Our Uniform Juvenile Court Act currently provides for transfer of a juvenile to criminal court if the juvenile court finds there are reasonable grounds to believe that the juvenile is not amenable to treatment or rehabilitation as a juvenile through available programs. N.D.C.C. § 27-20-34(1)(c). If the goal is truly to give the juvenile a chance at rehabilitation, prevent recidivism, and protect the public, then I urge you not to add another means of transferring children to criminal court through the use of extended juvenile jurisdiction. Rather, amend N.D.C.C. § 27-20-34(1)(b) and eliminate from automatic transfer to adult court the offenses listed other than murder and attempted murder. Our juvenile justice system is doing an excellent job and is better suited to deal with juvenile offenders, to rehabilitate them, to reduce recidivism, and to protect the public.

Thank you for your consideration.

Juvenile Policy Board concerns re: EJJ

1. Concerns about EJJ procedure currently in the bill. The movement nationally is toward individual attention to each case, rather than mandatory transfer. (Karen Kringlie, JPB Sept 2011)
2. Small number of cases to which EJJ would apply. (Scott Hopwood, guest, JPB Sept 2011)
3. Concern about potential procedural issues in the bill. (Dale Thompson, JPB Sept 2011; Juvenile Directors, guests, JPB Dec 2011)
4. Unnecessary to revisit juvenile transfer, the current system is sufficient. (Judge Mattson, JPB Sept 2011)
5. The impact on district court judges since referees are not currently authorized to conduct jury trials. (Justice Maring, JPB Sept 2011)
6. In current version of bill, EJJ is at states attorney discretion, not judicial discretion, even though the juvenile court referee ultimately decides. Juvenile Court should have the authority to request EJJ. (Justice Maring, JPB Sept 2011)
7. Concern about impact of jury trials for EJJ juveniles, in general. Does the EJJ juvenile have all the rights of an adult and does the state have all the rights as in an adult jury trial? (Justice Maring, JPB Sept 2011; Judge Mattson, JPB Sept 2011)
8. Would right to jury trial include the right to an expedited jury trial? (Judge Mattson, JPB Sept 2011)
9. Not necessarily against the EJJ concept, but not convinced the Juvenile Policy Board should be the driving force. (Dale Thompson, JPB Dec 2011)
10. Concern about apparent lack of judicial discretion prior to imposing adult sentence when juvenile probation revoked. If juvenile probation is revoked, does the juvenile go directly to prison? (Justice Maring, JPB Dec 2011)
11. Potential issues and impact on DOCR if juvenile probation revoked. Is DOCR authorized to incarcerate EJJ juveniles under 18 years old? (Justice Maring, JPB Dec 2011; Cory Pedersen, guest, JPB Dec 2011)
12. Insufficient need in North Dakota to warrant EJJ. (Judge Herauf, Judiciary Interim Committee Jan 2012)
13. EJJ would require considerably more judge time and jury trial protections which would require reconfiguring juvenile court process for a small number of cases. (Jim Ganje, Judiciary Interim Committee Jan 2012)
14. There is no discretion for the court to determine whether a violation of the juvenile sentence warrants automatically imposing the adult sentence. (Justice Maring, JPB Feb 2012)
15. EJJ doesn't extend juvenile court jurisdiction beyond 20 years old. Juveniles between 18 and 20 may not qualify for juvenile treatment options and are difficult to place in adult treatment programs. (Justice Maring, JPB Feb 2012)
16. Juvenile jury trials create a number of constitutional issues, including public access. ND law requires confidentiality in juvenile court processes. (Judge Herauf, JPB Feb 2012)

17. Juvenile court staff training is focused on juveniles 18 years and younger. Juvenile court staff training and duties would need to be restructured to work EJJ juveniles who are 18 to 20 years old. (Shawn Peterson, guest, JPB Feb 2012)
18. Referrals to juvenile court are down in the state because of the positive impact the state juvenile justice system's philosophy of balanced and restorative justice has had on improving outcomes for children and recidivism. This philosophy keeps children in the community and relies on evidence-based approaches like in-home family therapy and cognitive restructuring. Several studies have expressed skepticism about the effectiveness of extended juvenile jurisdiction laws. Studies say is that the hammer of the possibility of being transferred to adult court does not mean anything to juveniles nor does it affect their behavior. (Justice Maring, Judiciary Interim Committee Apr 2012)
19. Juveniles who have made some terrible choices are not capable of changing their thoughts and actions just because they are threatened with serious future consequences, such as adult jail time. Six large-scale national studies have shown that juveniles transferred to adult court are actually more likely to reoffend. (Cory Pedersen, Judiciary Interim Committee Apr 2012)
20. More juveniles will have adult sentences due to it being easier to transfer to adult court. The juvenile may not understand that making one mistake may cause them to acquire an adult record. (Judge Herauf, JPB May 2012)

*Note: The online minutes for the January 2011 Juvenile Policy Board meeting indicate EJJ was discussed at length. The reference in the minutes is general, so specific concerns are not available to include in the above list. EJJ was not discussed at the May 2011 Juvenile Policy Board meeting.

*Note: The August 2012 minutes of the Judiciary Interim Committee included Brad Saville's testimony. Since he didn't represent the Juvenile Policy Board, his comments are not included here.

**North Dakota Association of Criminal Defense Lawyers
Testimony on SB 2035 – Extended Juvenile Jurisdiction**

Chairman Hogue , Members of the Committee:

My name is Erica Shively and I appear on behalf of the North Dakota Association of Criminal Defense Attorneys. Our organization is not taking a position on SB 2025 at this time, but appears before this body to identify some concerns and offer technical assistance.

It is our understanding that the bill's origination was much simpler and aimed at removing some offenses from the list of mandatory transfers to district court. The idea was that it would allow additional time to work toward rehabilitation in the juvenile court, and if not successful, transfer these individuals to district court at a later time.

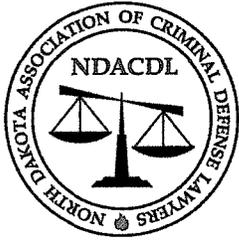
The evolution of the bill has caused some concerns both from a practical and technical standpoint. First and foremost, SB 2035 provides that any party can request a transfer to extended juvenile jurisdiction (EJJ). It appears from the current state of the bill that parents or guardians, the juvenile charged, or the court can make a motion for EJJ. Parties may have conflicting views on such a transfer creating the necessity for additional court process. Further, this removes the court from reviewing the necessity of a transfer or the likelihood of rehabilitation through the traditional juvenile processes by allowing a juvenile or his or her parents to voluntarily choose EJJ.

SB 2035 provides for a trial in EJJ cases, but does not specify that the Rules of Evidence and discovery rules will apply as they do for adults in district court. In juvenile proceedings, these rules are relaxed; however, this bill makes it mandatory that an "adult sentence" attach upon revocation. Because juveniles may be sentenced as if they were adults, they should be entitled to all of the protections they would be entitled to in district court. Further, Section 3 of the bill refers to the proceeding as a "hearing" and then indicates that a jury may be requested, further confusing the issue of what kind of proceeding is being proposed by the legislation.

SB 2035 does not directly define when the right to counsel will attach. While it is important this right attach for both parents and juveniles previous to making a voluntary transfer to EJJ so that these parties may be advised to the benefits and risks of such a voluntary transfer, there are also practical concerns. In juvenile disposition outside of EJJ, the right to counsel for parents does not attach until disposition. SB 2035 provides the right to counsel for parents at the trial stage, and as we recommend, should provide for counsel earlier as well. This will create an additional drain on state resources – the necessity of more lawyers who are often appointed at public expense in these cases.

SB 2035 also greatly waters down the discretion of the court, requiring it to impose the "adult sentence" in instances where the juvenile offender has violations of probation. It further takes away the ability to order a deferred sentence, requiring that it is mandatory to impose a suspended "adult" sentence. While dissipating the courts discretion in many areas, it does the opposite in removing the right to confrontation in revocation proceedings for "good cause" shown. This removal skirts the constitutional rights of a juvenile that, at that point in the process, is facing an "adult sentence".

Today, I am providing a list of concerns on behalf of the North Dakota Association of Criminal Defense Attorneys that address these concerns and other additional concerns with regard to the bill. Again, we do not come to you in opposition or support of this bill, but instead to make the committee aware of issues that we believe need addressing. If there is any other assistance NDACDL can provide, we would be happy to do so. Chairman John Hogue, members of the committee, thank you for your time.



NORTH DAKOTA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

To: Senate Judiciary Committee
Re: Extended Juvenile Jurisdiction, SB 2035

North Dakota Association of Criminal Defense Lawyers makes no recommendation on SB2035, but takes the position that there are some concerns with SB 2035 and provides technical assistance.

1. The word "adult" is used throughout the bill without definition and in some cases, improperly. It is our recommendation that "adult court" should more properly be deemed "district court" (See Pg. 2, Line 16). Further, "adult sentence" is never defined. (See Pg. 2, Line 7).
2. The granting of extended jurisdiction is done by the "court", but there is no further direction as to whether magistrate judges, judicial referees or district court judges will make this determination. With regard to juveniles who may, at some point, be subject to non-juvenile felony disposition, it is the position of NDACDL that these sentences should be set down by district court judges.
3. Technical cleanup - (See Pg. 3, Line 13) this should read "section 19-03.1-23" referring to the Controlled Substances Act.
4. Following a request for EJJ, the parents are removed as a party in showing good cause as to why a hearing cannot be held within 30 days. (See Pg. 6, Lines 5-8). It is assumed that the "parties" referred to in the remainder of the bill refer to the juvenile and parents, but this section does not include parents. (See also Pg. 6, Line 22).
5. The discretion of the court is removed in ordering EJJ if probable cause is found in regard to the commission of the delinquent act and public safety is served. Other considerations are involved in this process including how likely the juvenile is to succeed through treatment or rehabilitation. The language in this section is mandatory rather than discretionary indicating that the court can no longer hear such factors and EJJ will automatically apply. (See Pg. 6, lines 10-16).
6. Section 3 (See Pg.6, Lines 21-25) notes that the rules of criminal procedure will apply; however, up until this point in the process, discovery rules under the North Dakota Rules for Criminal Procedure have not applied. Does this constitute a due process violation? Further, Section 3 provides for a "jury" if requested, but refers to the process as a "hearing" and does not delineate whether or not the Rules of Evidence apply as they would in hearing in district court for non-juveniles.
7. Section 3 (See Pg. 6, Lines 22-25) also provides for the right to counsel after an EJJ designation has attached. What about the right to counsel when parents and/or the accused juvenile are choosing whether or not to voluntarily fall under EJJ?
8. Section (3)(b) (Pg. 6) indicates that a suspended sentence will be imposed and leaves no room for a deferred sentence, a common tool used by the court in sentencing whereby an individual is able to earn the removal of a crime from their record by successfully meeting the terms of the court's order and following rehabilitation plans set forth by the court.
9. The removal of the right to confrontation for juveniles facing revocation is problematic. (See Pg. 7, Line 6). The possibility of removal of the confrontation right, if good cause is show as the bill states, creates a violation of constitutional rights. (See Pg. 7, Section 6).
10. The bill indicates that upon imposition of a suspended sentence following a revocation, the juvenile is transferred to "adult" court and will remain there for any subsequent proceedings or future proceedings. (See Pg. 7, Section 8). There is no indication of what "subsequent proceedings" to which this bill may be speaking.
11. Further, the transfer to "adult" court is mandatory and, again, leaves no discretion to the court. (See Pg. 7, Line 31).

Questions 2035 leaves behind

1. Does a voluntary transfer by the juvenile and/or his or her parents automatically fall within EJJ without discretion of the court?
2. When juvenile jurisdiction can already be extended until age 20 under current l w, what are the actual goals of this bill?