TESTIMONY OF MARY MUEHLEN MARING, JUSTICE
North Dakota Supreme Court

BEFORE THE JUDICIARY COMMITTEE
April 11, 2012

Chair Nething and Members of the Judiciary Committee:

My name is Mary Muehlen Maring. I am a Justice on the North Dakota Supreme Court, and a member of the Juvenile Policy Board, which is established by North Dakota Supreme Court Administrative Rule 35 by authority provided under Article VI, § 3 of the North Dakota Constitution. The Juvenile Policy Board consists of district court judges, a judicial referee, a juvenile court officer, and a supreme court justice. The Board is responsible for the development of policies and procedures for the juvenile justice system and for the recommendation thereof to the Supreme Court for adoption.

The Board 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.

Cory Pedersen, the Juvenile Court Director for Unit 3, will explain to you many of the reasons why this is not a good idea for North Dakota. I hope to support and add to the reasons why you should not recommend this concept be interjected into our juvenile justice system.

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. 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.