

**LEGISLATIVE JUDICIARY COMMITTEE MEETING
EXTENDED JUVENILE JURISDICTION
APRIL 11 2012**

Good Afternoon Mr. Chairman, Members of the Committee:

My name is Cory Pedersen and I am the Juvenile Court Director for Unit 3. I am here today to address concerns the Juvenile Court has with the current proposed legislation of extended juvenile jurisdiction. I have worked in North Dakota's Juvenile Justice System for almost 17 years and over that time have had the opportunity to discuss system differences with peers across the country. I'm always reminded that North Dakota's Juvenile System is in many ways at or above the national standard when it comes to the practice of juvenile justice. We are seen as ahead of the curve, never overreacting to a handful of cases or situations or media hype, and always learning from new research.

As I stand before you today, nationally juvenile crime continues to decline and juvenile violent crime is at its lowest point in two decades. (OJJDP December 2011) North Dakota's juvenile referrals have declined at a similar pace and we have seen a 20 % decrease in delinquent referrals since 2007. In 2011, North Dakota had 405 felony offenses (11% of the total), and only 11 cases were transferred involuntarily to adult court (2011 Juvenile Court Report). I am handed you a snapshot graph of the statewide cases that were transferred to adult criminal court involuntarily over time.

As the directors examined the draft for extended juvenile jurisdiction, it appears to us to primarily be for the purpose of imposing a threat of an adult sentence over the head of a juvenile in the hopes that the threat will encourage compliance and deter future bad behavior. As juvenile justice experts, we know that threats, no matter how serious, do not change adolescent behavior. If only it were that easy. Juveniles who have made some terrible choices

are not capable of changing their thoughts and actions just because we threatened them with serious future consequences such as adult jail time. If threats of future consequences worked with adolescents, we would have a fool proof system with a zero recidivism rate. Brain research in the last decade has clearly shown that the very last part of a child's brain to develop is the frontal lobe. Why does that matter? The frontal lobes involve 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. The brain is not fully developed until around age 21 for females and up to age 23 for males. The experience of the North Dakota Juvenile Court Officers agrees with this current adolescent brain research as well as what we know about the harmfulness of early transfers to adult court.

Six large-scale national studies have shown that juveniles transferred to adult court are actually more likely to reoffend. (OJJDP Juvenile Justice Bulletin June 2010) Juveniles transferred to adult court had much higher recidivism rates than the youth retained in the traditional juvenile justice system. Fear of transfer or fear of an adult criminal sentence will not deter juvenile crime nor will it make our communities safer.

In North Dakota, the juvenile court staff knows that keeping as many juveniles in Juvenile Court and out of locked facilities is best practice and gives our state the highest number of successful long-term outcomes. Averaging less than 7 involuntary transfers a year would indicate we are currently following the best practice without extended juvenile jurisdiction.

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.

For the purpose of discussion, I have also handed you some research on extended juvenile jurisdiction and blended sentencing. This will give everyone here a look at potential impacts and unintended consequences extended juvenile jurisdiction could bring if put into law.

Dr. Fred Cheesman, from The National Center of State Courts studied extended juvenile jurisdiction over a ten year period (1999-2010) in three different states. (Minnesota, Ohio, and Vermont). His findings show areas of concern we should be aware of and had the following two recommendations:

1) States should employ an objective risks-and-needs assessment to identify the most suitable candidates for extended juvenile jurisdiction and adult transfers. This would help prevent two biases found in the study: (geography and race); and

2) To provide enhanced services and supervision to juvenile offenders given extended juvenile jurisdiction sentences.

Juveniles transferred to adult court, in some form, is probably a permanent feature of American juvenile justice. The question today is what form is best for North Dakota and what will have the most successful impact on North Dakota juveniles and North Dakota communities? Many states in the 90's went to extended juvenile jurisdiction in order to appear "tough on crime" only to find out via the new research that youth transferred to adult court actually reoffend more often. Now those states are enacting policies and laws to get back to something closer to our North Dakota juvenile system. I would hope that before a juvenile can even begin their adult life, before they have a chance to live on their own, the world does NOT have to hear their story played out in a public jury trial. This would be contrary to the juvenile system's core emphasis on individual, corrective treatment and rehabilitation while removing from youth the taint of criminality.

The North Dakota juvenile courts deal every day with complicated youth and families as well as the victims of juvenile crime, all whom have a wide variety of needs. It is important we continue to focus on criminogenic needs and risks of our youth in North Dakota and base decisions for the juveniles on evidence-based approaches.

The National Center for State Courts in the report that I handed out and the North Dakota Juvenile Policy Board and Justice Maring in their testimony before this committee have all pointed out some legitimate areas of concern with the concept of extended juvenile court jurisdiction. I would ask that this committee further address those concerns before going forward with an approach that may not benefit North Dakota youth or North Dakota communities given what we know today about adolescence behavior.

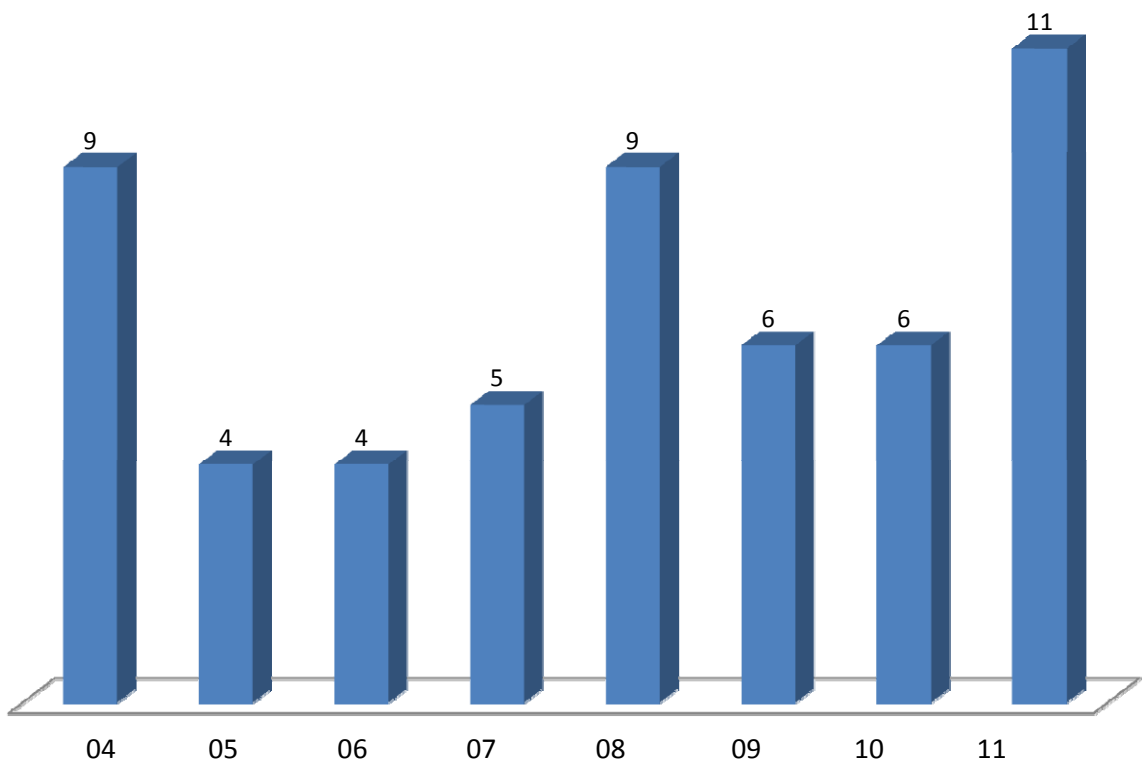
Thank you for your time

Respectfully,

Cory Pedersen
Juvenile Court Director Unit 3

NORTH DAKOTA JUVENILE COURT

STATEWIDE INVOLUNTARY TRANSFERS



A DECADE OF NCSC RESEARCH ON BLENDED SENTENCING OF JUVENILE OFFENDERS: WHAT HAVE WE LEARNED ABOUT “WHO GETS A SECOND CHANCE?”

Fred Cheesman

Principal Court Research Consultant, National Center for State Courts

Blended sentencing enables some courts to impose juvenile or adult sanctions (or both) on certain juveniles. Extralegal factors (race in particular) influenced the probability of a blended sentence and transfer to adult criminal court, even though both are rarely imposed, and objective risk-and-needs assessment information should inform decisions in these cases.

During the early 1990s, many state legislatures made sweeping changes in the dispositional and sentencing options available to juvenile courts, including the introduction of a new juvenile sentencing innovation, *blended sentencing*.¹ Blended sentencing enables some courts to impose juvenile or adult correctional sanctions (or both) on certain young offenders (Sickmund, Snyder, and Poe-Yamagata, 1997). While 16 states had blended-sentencing statutes in place at the end of 1995, at least 26 did so at the end of 2004, encompassing 60 percent of the nation’s juvenile population aged 10 to 17, according to data from the 2000 census. Thus, at least 60 percent of the nation’s juvenile population is subject to a blended sentence.

Blended sentencing emerged during a period of steadily increasing violent juvenile crime as a compromise between those who wanted to emphasize public safety, punishment, and accountability of juvenile offenders and those who wanted to maintain or strengthen the traditional juvenile justice system. It offers a means of resolving these disparate views because blended sentencing combines opportunities for rehabilitation in the juvenile justice system with the possibility of sanctions in the adult criminal justice system. Blended sentencing offers juvenile offenders a “last chance” within the juvenile system by providing “an incentive to respond to treatment in order to avoid the consequences of an adult sentence” (Redding and Howell, 2000: 147).

This article describes the results of two research studies conducted by NCSC between 1999 and 2010 that examined blended sentencing in three states. The first study examined blended sentencing in Minnesota and was funded by the State Justice Institute and the Office of Juvenile Justice and Delinquency Prevention. The second, funded by the National Institute of Justice and conducted in partnership with the National Center for Juvenile Justice (NCJJ), examined blended sentencing in Ohio and Vermont.

NCJJ has developed a widely used typology of blended-sentencing practices in the states (Torbet et al., 1996; see table). Of the 20 states with blended-sentencing laws at the end of 1997, nine gave blended-sentencing authority to *juvenile* court judges for cases involving some specified category of juvenile offender adjudicated delinquent. In nine other states, *criminal* court judges exercise blended-sentencing authority following a juvenile’s conviction. Two states, Colorado and Michigan, gave blended-sentencing options to both juvenile and criminal court judges.

Regardless of the forum in which it is exercised, blended-sentencing authority may be *exclusive* or *inclusive*, and under some circumstances, it may be *contiguous* (Torbet et al., 2000):

- An *exclusive* blended-sentencing model allows a judge to impose either a juvenile or an adult sanction and makes that sanction effective immediately.
- Under an *inclusive* blended-sentencing model a judge may impose *both* a juvenile and an adult sanction, with the latter usually remaining suspended and becoming effective only in the event of a subsequent violation.
- Finally, some states have enacted *contiguous* blended-sentencing laws, under which a juvenile court may impose a sanction that begins in the juvenile system but lasts beyond the maximum age of extended juvenile court jurisdiction, at which time the offender must be moved into the adult correctional system to serve the remainder of the sentence.

Minnesota has been practicing a form of juvenile-inclusive blended sentencing (i.e., the juvenile court imposes both juvenile and stayed adult sentences, the latter of which can be imposed at the discretion of the juvenile court) since 1994. In 2002 Ohio implemented juvenile-inclusive blended sentencing, based largely on the

Varieties of Blended Sentencing Used Across States

Type	Description	Adopted By	In Year
Juvenile-Exclusive Blend	The juvenile court imposes either juvenile (delinquency) or adult (criminal) sanctions.	New Mexico	1995
Juvenile-Inclusive Blend	The juvenile court imposes both juvenile and adult sanctions, typically suspending the adult sanction.	Illinois, Kansas South Dakota Minnesota Alaska, Arkansas, Connecticut Michigan, Montana, Vermont Ohio	1990 1993 1994 1995 1997 2002
Juvenile-Contiguous	The juvenile court imposes a juvenile sanction that would be in force beyond the age of its extended jurisdiction. At that point, the juvenile court determines whether the remainder of that sanction should be served in an adult criminal corrections system.	Texas Massachusetts, Rhode Island Colorado South Carolina	1987 1990 1993 1994
Criminal-Exclusive Blend	The criminal court imposes either juvenile or criminal sanctions.	Virginia, West Virginia Colorado Florida California, Idaho Michigan Oklahoma	1985 1993 1994 1995 1997 1998
Criminal-Inclusive Blend	The criminal court imposes both juvenile and criminal sanctions, typically suspending the criminal sanction.	Virginia Florida Arkansas, Michigan Iowa	1985 1994 1995 1997

Minnesota model. Vermont, while technically practicing juvenile-inclusive blended sentencing since 1998, provides a contrast because of the crucial role that adult criminal court judges play in the decision-making process.

In an effort to redress the absence of empirical data about the practice of blended sentencing, we next examine the results of the studies of blended sentencing in the three states.

Minnesota

Blended sentencing in Minnesota is referred to as “Extended Jurisdiction Juvenile,” or EJJ. EJJs are initially sentenced as juveniles although they receive all adult criminal procedural safeguards, including the right to a jury trial. Juveniles disposed EJJ receive a juvenile court disposition and a “stayed” adult prison

sentence, based upon the Minnesota Sentencing Guidelines for adult felons. Juvenile court jurisdiction lasts until age 21, hence the term “Extended Jurisdiction Juvenile.”

A random sample of 564 juvenile offenders (EJJs and transfers were oversampled due to their low frequency) was used to analyze the factors that differentiate EJJs from transfers to the adult criminal justice system and from juveniles processed through the juvenile justice system exclusively (“conventional” juvenile cases). The analysis was rigorous—a two-stage probit controlling for selection bias.

Important findings from this study include:

- EJJs and transfers occur infrequently. The Minnesota District Court disposes of approximately 10,000 juvenile felons annually, but only 2,400 of these meet the presumptive certification criteria that identifies a serious juvenile offender subject to transfer to the adult criminal justice system. Further, only 100 juveniles are transferred annually, and about 300 juveniles receive a blended sentence (about 1 percent and 3 percent of all juvenile felon cases disposed, respectively).
- The judicial district where the case was disposed influenced the probability of motioning (either for transfer or EJJ) and the type of dispositional alternative sentenced: transfer, EJJ, or conventional juvenile.
- The offender’s race influenced the probability of motioning and the type of dispositional alternative selected. Minorities were more likely to be motioned by the prosecutor for transfer or EJJ than white juvenile offenders and, among motioned cases, were more likely to receive a transfer than EJJ.
- EJJs had more serious charges than transfers, raising doubts about whether transfer was being reserved for the “worst of the worst” and blended-sentencing cases for the “least worst of the worst” (Feld, 1995). Consequently, it is not clear that EJJs and transfers were targeting their intended offender population.

Ohio

To compare the alternative processing tracks, NCSC collected data on the use of processing alternatives for juvenile offenders adjudicated for felony offenses between 2002 and 2004 from five counties in Ohio (Cuyahoga, Hamilton, Lucas, Summit, and Delaware). Although the sample from these counties does not constitute a random sample of juvenile adjudications across all counties in Ohio (N=28,628), it should be noted that these five counties accounted for a very significant proportion (75 percent) of Ohio's statewide juvenile adjudications between 2002 and 2004. The final sample included all blended-sentencing and transfer cases from the five counties, adjudicated or sentenced between 2002 and 2004 (139 and 164 cases, respectively). NCSC also drew a proportionate random sample of 340 conventional juveniles from each of the five participating counties.²

As was the case in Minnesota, we sought to analyze the factors that differentiate blended-sentencing cases (referred to as "Serious Youthful Offenders," or SYOs) from transfers from conventional juvenile cases in Ohio. A two-stage probit identified factors differentiating blended-sentencing cases from conventional juvenile cases and from cases transferred to the adult criminal court in Ohio.

The initial selection model revealed that factors differentiating conventional juvenile cases from cases selected for nonconventional processing (i.e., SYO or transfer) were principally legal, including offense seriousness and number of prior Ohio Department of Youth Services placements, although age and gender were also significant influences.

The second-stage probit identified factors differentiating transfers from SYOs, controlling for the probability of selection for nonconventional processing. Age, gender, and race were significant predictors of processing track. Minorities were significantly more likely than whites to be processed as transfers rather than as SYOs, suggesting possible bias in decision making.

As was the case in Minnesota, jurisdiction also influenced the selection of dispositional alternative. The odds of a blended sentence were higher in Delaware County than in Cuyahoga. The odds of transfer were much higher for juvenile offenders from Hamilton County than any of the other counties.

Just as in Minnesota, blended sentencing and transfer are rare occurrences. The ratio of SYOs to conventional adjudications was about 205 to 1, while the ratio for transfers was 174 to 1 in the five counties.

Vermont

Blended sentencing in Vermont combines elements of both criminal- and juvenile-inclusive blended sentencing. Blended-sentencing cases (referred to as "Youthful Offenders," or YOs) originate in the district court where a decision is made whether to grant a petition (usually filed by defense) to have a juvenile offender declared a YO, whereupon they become eligible for transfer to the family court for a blended sentence. Juvenile offenders whose cases were filed in district court may also be transferred to family court by means of a "reverse waiver," which is entirely at the discretion of the district court judge.

It is almost universal practice in Vermont to direct any juvenile case involving an offender 16 years or older to district court. The YO designation provides an opportunity to redirect certain offenders whose cases were directly filed in district court to the family court, where they are more likely to receive treatment.

We attempted to collect data on all YO and reverse-waiver cases from 1998 through 2006. A random sample of transfers that occurred during this period was obtained. Data were eventually collected on 106 YO cases, 170 reverse-waiver cases, and 185 transfers to the adult correctional system.

Data from Vermont samples could not support a multivariate analysis, but offered some interesting insights. First, blended sentences are rare in Vermont, just as they were in Minnesota and Ohio. Second, as was also the case in Minnesota and Ohio, geography influences the probability of receiving particular types of sentences. Third, as was the case in Minnesota and Ohio, transfers are significantly older than

Blended sentencing has the potential to be an important step in a juvenile justice system that provides a "graduated" response to juvenile offending.

blended-sentencing cases. Fourth, YOs had a much higher probability of being charged with property theft than any other type of case, while transfers and reverse waivers had a much higher probability of being charged for a civil disturbance. Fifth, YOs had a significantly larger number of convictions than reverse waivers and transfers.

Discussion

By providing the juvenile justice system with an intermediary response to juvenile offending, (i.e., between conventional juvenile processing and transfer to the adult criminal court), blended sentencing has the potential to be an important step in a juvenile justice system that provides a “graduated” response to juvenile offending (National Criminal Justice Association, 1997). However, to be effective in this capacity, blended sentencing must be free from bias and used in a manner consistent with public safety. Our research, however, suggests that in states employing juvenile-inclusive blended sentencing, minorities will be disproportionately overrepresented among transfers, the most punitive of the processing tracks, and underrepresented among blended sentences, the latter providing the last chance for treatment in the juvenile justice system.

The most promising solution to “rationalize” the use of blended sentencing and to avoid disparities in its use is to incorporate the principles of “risk and needs” in its application. A growing number of experts have advocated the incorporation of the risk principle throughout the criminal and juvenile justice systems to rationalize decision making and increase effectiveness (e.g., Warren, 2007). Objective risk assessment can reduce or eliminate undesirable bias in decision making (Coordinating Council on Juvenile Justice and Delinquency Prevention, 1996).³

Juvenile judges are currently making informal determinations as to offender needs and risk, but formal risk-and-needs-assessment procedures can improve the validity and fairness of such determinations (Silver and Chow-Martin, 2006). Consequently, our principal recommendation is that objective risk-and-needs assessments be used to identify the most suitable candidates for blended sentences and adult transfer. Use of objective risk-and-needs assessments to make these determinations will not completely eliminate risks to public safety, but should reduce them by better informing what have heretofore been predominately subjective decisions.

Who would the best candidates for blended sentencing and transfer to the adult criminal justice system? Adult transfer would be reserved for a few of the oldest, most serious juvenile offenders that present the greatest risk to public safety and who are least amenable to treatment in the juvenile justice system, identified by objective assessments. The profile of juvenile offenders given blended sentences would be similar to that for transfers except that they would be younger (but older than most conventional juvenile court cases), would present less of a risk to public safety, and would have the greatest need for and potential to respond to treatment in the juvenile justice system, again identified by objective assessments.

Both transfer and blended sentences should remain very low frequency occurrences because most juvenile offenders are amenable to treatment in the conventional juvenile justice system. However, the use of blended sentencing should be expanded at the expense of transfers to avoid the transfer of inappropriate juvenile offenders to the adult criminal justice system, keeping more juvenile offenders in the juvenile justice system while also holding them accountable. The recommendations generated by the risk-and-needs assessments should not be binding on the juvenile court but will better inform the decision-making process.

Our second recommendation is to provide enhanced services and supervision to juvenile offenders given blended sentences. Given that these juvenile offenders are potentially subject to adult penalties (in addition to whatever requirements are imposed by the juvenile court) and that they have been determined to be amenable to treatment in the juvenile justice system, it follows that they should receive services designed to reduce their probability of reoffending, above and beyond those received by conventional juvenile offenders. As Vincent, Terry, and Maney (2009) point out, “Arguably, the most dangerous youths should receive the most punitive sanctions and the most intensive interventions” (p. 388).

Objective risk-and-needs assessments should be used to identify the most suitable candidates for blended sentences and adult transfer.

ENDNOTES

¹ Between 1992 and 1995, 41 states changed their laws to make waiver to adult court easier, 16 states modified or added statutes requiring mandatory minimum periods of incarceration for certain violent or serious offenders, and 12 states extended the maximum age of the juvenile court's continuing jurisdiction over juvenile offenders—most often to age 21 (Sickmund, Snyder, and Poe-Yamagata, 1997).

² That is, the randomly selected sample of conventional juvenile offenders was proportionately distributed among the five counties according to the proportion that each county represented of the total 2002-04 adjudications.

³ Objective risk-assessment instruments were created to minimize subjectivity and unreliability associated with clinical decision making. Objective tools evaluate all offenders using the same set of criteria and information that can be factually verified. The results are then tabulated in some fashion, and predetermined uniform decision functions, such as cutting scores or decision trees, decide the outcome.

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